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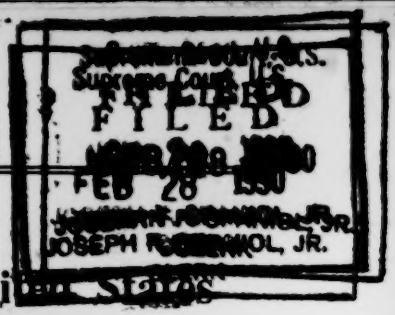

In The

Supreme Court of the United States

October Term, 1939

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA, ET AL.,

Petitioners,

v.

ROBIN GEORGE AND MARCIA GEORGE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT

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QUESTIONS PRESENTED

1. Whether the First Amendment prohibits the imposition of common law tort liability for intentional infliction of emotional distress on the basis of religiously motivated acts by church officials, in the absence of a finding of actual malice manifesting an intent to inflict harm on the plaintiff.

2. Whether the imposition of civil liability on a religious body may be sustained where the jury instructions, pleadings, argument, and testimony defined the tort as encompassing constitutionally protected as well as unprotected activity.

3. Whether a punitive damages award may be sustained where its inevitable effect is to require seizure of church properties essential to the religious observances of devotees and worshippers who had no part in any wrongdoing; or, in the alternative, whether any such award against a religious body must be based on clear and convincing evidence and guided by clear instructions regarding the amount to be awarded.

4. Whether the libel judgment violated clearly established constitutional standards under the First Amendment.

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the International Society for Krishna Consciousness of New York, the International Society for Krishna Consciousness of Louisiana, and the International Society for Krishna Consciousness of Canada were defendant-appellants in the action below and are petitioners herein. Roy Christopher Richard and Nico Kuyt were also defendant-appellants in the action below and are denominated respondents in this Court pursuant to Sup Ct. R. 12.4.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT

The International Society for Krishna Consciousness of California, of New York, of Louisiana, and of Canada (hereinafter ISKCON) petition for a writ of certiorari to review the judgment of the Court of Appeal of the State of California, Fourth Appellate District, in this case.

OPINIONS BELOW

The order of the Supreme Court of California denying a petition for review (Pet. App. 1a) is not reported. The opinion of the Court of Appeal, as modified (Pet. App. 2a), was originally reported at 213 Cal. App. 3d 729, but was depublished by order of the California Supreme Court. The order of the Superior Court granting a remittitur and denying a motion for a new trial (Pet. App. 81a) is not reported.

JURISDICTION

The judgment of the Court of Appeal was entered on August 30, 1989. The order modifying the opinion and denying the motion for rehearing was entered on September 29, 1989. A timely petition for review was denied by the Supreme Court of California on November 30, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." The Fourteenth Amendment provides, in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT

1. The story can be told in lurid detail, but the essential facts are these. Robin George, whom the Court of Appeal described as "a bright and gifted high school student of above-average intelligence and maturity" (Pet. App. 32a), ran away from home in 1974 at the age of 15 and sought refuge at the local Hare Krishna temple, a faith to which she had converted and to which her parents were strenuously opposed. With the permission of her parents, she had visited the temple on numerous occasions, and had become attracted to the religion, a monotheistic branch of devotional Hinduism, formally known as *Gaudiya Vaishnavism*.[1] While living at home, Robin read the Krishna scriptures, adopted Krishna styles of dress and appearance, passed out Krishna literature at school, adhered to Krishna diet, erected a Krishna shrine in her bedroom, and arose before dawn each morning to chant on her prayer beads and perform religious devotions. Pet. App. 5a. Her parents responded by destroying the shrine, confiscating her prayer beads, and ordering her to cease her religious devotions. *Id.*; RT 962.

The president of the local temple, respondent Roy Christopher Richard, who has since been expelled from the faith, met with Robin to discuss her decision to adopt the Krishna faith. While the details of this discussion are contested, Richard evidently advised Robin that if she were sincere in her religious commitment she could not continue to live at home. Pet. App. 6a. It is not clear from the context whether this advice was predicated on the hostility toward Krishna Consciousness exhibited by Robin's parents or on the general

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[1] For concise descriptions of the religion of Krishna Consciousness, see M. Eliade, 7 *Encyclopedia of Religion* 266, 266-68 (1987); *ISKCON v. Barber*, 650 F.2d 430 (2d Cir. 1981).

tenet of the Krishna faith that counsels devotees to live in monastic communities.[2]

On November 16, 1974, Robin left her house through a bedroom window and went to the ISKCON temple. At Robin's instigation and with her full knowledge, consent, and cooperation, Richard and several other ISKCON officials undertook to conceal Robin's whereabouts from her parents over the course of approximately one year. Among other things, they (1) lied to the parents and police when they came searching for Robin, saying she was not staying at an ISKCON temple; (2) helped Robin escape in such situations, providing her with disguises and facilitating transportation to temples in distant cities; and (3) concocted false letters from Robin to her parents and others, which stated that she had left the religion and was travelling in Mexico. Summarizing the evidence, the Court of Appeal stated: "there was every objective indication that Robin actively sought defendants' assistance and fully cooperated in their efforts to hide her from her parents." Pet. App. 36a n.24.

During this period, Robin was by all outward appearances a genuine convert and devotee to Krishna Consciousness. By her own admission, she "adopt[ed] and sincerely believe[d] in" the religion. 11 RT 1845. She lived in the temple precincts as other devotees lived (a communal and ascetic way of life), attended classes with other devotees on the *Bhagavad-Gita* and other scriptures, kept the schedules that other devotees keep (including rising in the early morning hours for chanting and devotions), ate the food that other devotees eat (a strict vegetarian diet), engaged in the practices that other devotees engage in (including *sankirtan*, a ritual form of evangelism and mendicancy), and expressed beliefs, such as in reincarnation, that other devotees share.

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[2] In the Krishna faith, it is believed that unmarried devotees should, whenever possible, live together in monastic surroundings called "ashrams." *Srimad Bhagavatam* 3d Canto, 25th chapter, verse 25.

Perhaps not surprisingly, Robin's parents were upset at her conversion. They spared no efforts to locate her, return her to home, and cause her to cease her adherence to the tenets of Krishna Consciousness. At one point, police in New Orleans turned Robin over to her father, Jim George, who took her home. She was there for three weeks, but was unwilling to stay. To prevent her departure, Robin's parents chained her to the toilet at night and got involved in physical scuffles with her. During the trip home, her father struck her to prevent her from chanting (Pet. App. 10a-11a), and while she was home her parents burned her copy of the Hindy's holy book, the *Bhagavad-Gita* (RT 962). At the earliest opportunity, she again escaped from home and returned to the temple, where she informed various devotees that her parents had beaten and mistreated her. 36 RT 7082-83. Robin and her friends in ISKCON thereafter redoubled their efforts to mislead her parents.

At no point during that year were Robin's parents actually persuaded by the lies, false documents, or other forms of concealment. They continued to believe that their daughter was living in an ISKCON temple, and they mounted a major public relations and legal campaign to pressure ISKCON officials in California to bring about her return. As a result of these efforts, temple officials eventually ordered Robin to return to her home – an act which she later admitted at an "anti-cult" press conference was "the worst thing" the Krishnas had done to her. 32 RT 6206, 6231-32.

Four months after Robin returned home, her father died of a heart attack. An expert witness testified at trial that the stress resulting from Robin's sojourn with the Krishna movement could have contributed to Jim George's death. Some months later, Robin and her mother, Marcia George, became involved in an "anti-cult" organization and spoke out against the religion on television and in the news media. At a press conference where Robin was scheduled to speak, officials of ISKCON distributed a release giving their side of the story. It was alleged that this release defamed Marcia George by implying that Robin had run away from home originally because her parents had beaten her.

2. Robin and Marcia George filed suit against four ISKCON entities and two individuals on a number of claims, of which four went to trial: false imprisonment (as to Robin), intentional infliction of emotional distress (Robin and Marcia), libel (Robin and Marcia), and wrongful death (Robin). Pet App. 22a.

The "centerpiece" (Pet. App. 23a) of the suit was Robin's claim of false imprisonment, which was ultimately thrown out by the Court of Appeal on the ground that it was based on constitutionally protected conduct and the free religious choice of Robin. The plaintiffs' theory was that the religious practices and beliefs of Krishna Consciousness (diet, methods of worship, schedule, communal living arrangements, and belief in reincarnation) are so debilitating and psychologically coercive that Robin was "brainwashed" into adherence to the religion. See Pet. App. 33a-35a. According to plaintiffs' closing argument, "the whole nut of this case revolves around this false imprisonment charge," and the other claims were "hogwash" if there was no false imprisonment. Pet App. 23a-24a n.15, 44 RT 8481, 8526-8527.

Pursuant to this theory of liability, much of the testimony and argument at trial was devoted to portraying the life of a Krishna devotee – Robin's life – as psychologically and physically dangerous, and to depicting the horrified reaction of Robin's parents to her conversion. The jury heard five days of testimony from two supposed experts on "cults" about the evils of Krishna Consciousness (1 RT 279, 27 RT 5113 – 29 RT 5527; 31 RT 5871-6002), and two days from a disgruntled former member, whom the trial judge accepted as an "expert" (22 RT 4269), giving a highly pejorative version of the tenets of the religion (21 RT 4045 – 22 RT 4361). Plaintiffs' counsel urged the jurors to "imagine your child going to the Hare Krishna temple," where they would be taught that their parents are "meat eating karmi demon[s]" (44 RT 8499). He compared the Krishna movement to Dracula, trying to lure Robin "to her destruction" (*id.* at 8513-14).

The jury found joint and several liability against all defendants on all counts. It awarded a total of $32,587,500. The trial judge reduced these damages (Pet. App. 23a) and the plaintiffs accepted the remittitur. After the remittitur, the damages stood as follows:

Cause of Action	Jury Award	After Remittitur
False imprisonment (Robin)		
Compensatory	$1.5 million	$1.5 million
Punitive	$15 million	$5 million
Emotional Distress		
Compensatory (Robin)	$250,000	$250,000
Compensatory (Marcia)	$1.5 million	$400,000
Punitive (Joint)	$12.25 million	$2 million
Libel		
Compensatory (Robin)	$2,500	$2,500
Compensatory (Marcia)	$10,000	$10,000
Punitive (Joint)	$2 million	$500,000
Wrongful Death (Robin)		
Compensatory	$75,000	$75,000
Punitive	N/A	N/A
Total	$32,587,500	$9,737,500

3. On appeal, petitioners challenged each aspect of the judgment against them under the First Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment. See Br. of ISKCON of New York at 4-45 (First Amendment challenge to false imprisonment claim);[3] Richard Br. at 4-5 (First Amendment challenge to

[3] Each of the petitioners adopted by reference the opening briefs of their co-appellants in the Court of Appeal, pursuant to California Rule of Court 13.

intentional infliction of emotional distress claim as to Robin); *id.* at 3-4, 9-11, ISKCON of Louisiana Br. at 8-35 (First Amendment challenge to intentional infliction of emotional distress claim as to Robin's parents, which subsumes the wrongful death claim as to her father); Kuyt Br. at 25-31 (First Amendment challenge to libel claim). Moreover, petitioners launched a broad-based attack on the entire proceeding under the First Amendment, contending that the nebulous nature of the claims, the inflammatory character of the evidence submitted in support of those claims, and the intensive and hostile scrutiny of Krishna religious beliefs and practices invited the jury to punish petitioners for their unconventional and unpopular religious beliefs. ISKCON of Louisiana Br. at 114-145. Finally, petitioners challenged the awards of punitive damages as violating the Due Process and Excessive Fines Clauses and the First Amendment (Richard Br. at 35-45).

The Court of Appeal reversed all judgments in favor of Robin (other than in her capacity as heir to her father, on the wrongful death count) on the ground that she had joined the Krishna religion of her own free will, that there had been no threat or use of force of any kind, and that Robin had the capacity to consent. The court concluded that "Robin's brainwashing theory of false imprisonment is no more than an attempt to premise tort liability on religious practices the Georges find objectionable. Such a result is simply inconsistent with the First Amendment." Pet. App. 35a.

The Court of Appeal affirmed the judgment on all other counts. With respect to the intentional infliction of emotional distress claim as to Marcia George, the court declined to explain what it considered the boundary between constitutionally protected and unprotected conduct to be, stating only that "[b]ecause the actionable conduct here involved far more than the mere preaching of religious beliefs or making statements of opinion," it "need not consider" the degree of constitutional protection that should be accorded petitioners' "religiously motivated importuning of a minor to leave his

parent or guardian." Pet. App. 39a n.26. In response to petitioners' contention that the plaintiffs had not proven that the "alleged conduct on the part of defendants was intended to cause them emotional distress" (Richard Br. at 7), the Court of Appeal held it sufficient that plaintiffs "knew" that their conduct "was likely to cause the Georges severe emotional suffering" (Pet. App. 39a).

The court also rejected petitioners' argument that the instructions, argument, and evidence permitted the jury to include in its verdict damages for constitutionally protected conduct, namely, the conversion of Robin. Pet. App. 41a-43a.[4] The court engaged in an independent "review of the record," on the strength of which it concluded that the damages awarded by the jury "were not" based on constitutionally protected activity. *Id.* at 43a.

Finally, the Court of Appeal upheld the award of punitive damages. It declined to extend protections under the Due Process Clause "pending further action by the United States or California Supreme Courts" (Pet. App. 75a). And it rejected arguments for protection under the First Amendment on the ground that "[t]he United States Supreme Court has placed no such limitation on the imposition of punitive damages in state defamation actions involving private persons." *Id.* at 76a.

4. With interest, the total judgment now amounts to approximately $5 million. Unable to post a statutory bond, petitioners have been forced to place into voluntary receivership all of their real property and substantially all of their tangible personal property. This includes their temples (including the Los Angeles temple, the center and worldwide headquarters of their faith), along with associated ashrams

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[4] The court stated that petitioners raised this objection for the first time on appeal, but it nonetheless addressed the issue on the merits. The federal question is therefore properly presented. *Dun & Bradstreet, Inc.* v. *Greenmoss Builders*, 472 U.S. 749, 754 n.2 (1985) (plurality opinion); *Raley* v. *Ohio*, 360 U.S. 423, 436-37 (1959).

(monastic living facilities) and schools. Plaintiffs have even attempted to seize control of petitioners' religious book publishing entity, which prints the *Bhagavad-Gita*, other holy books, and religious materials.[5] If the judgment below is not reversed, virtually all of this property will be lost.[6] This is a virtual death sentence for the religion of Krishna Consciousness in most of the United States and Canada.

REASONS FOR GRANTING THE PETITION

The assets of the Hare Krishna religion in most of North America have been placed in the hands of a state-appointed receiver and, unless the judgment is reversed, will be turned over to avowed enemies of the religion. For the first time in this country since the anti-Mormon frenzy of the 19th Century, an entire religion stands subject to destruction and the confiscation of its property at the hands of the state. See *Late Corporation of Church of Jesus Christ of Latter Day Saints* v. *United States*, 136 U.S. 1 (1890). On the outcome of this case hinges the very survival of petitioners' religion.

Petitioners acknowledge that some of their actions were unlawful and could be made the basis for civil liability under proper legal standards. We agree that there is no constitutional right to conceal a minor or to deceive her parents about her whereabouts. But we submit that the proceeding below turned into a trial of what plaintiffs' counsel called the "pernicious evil" (44 RT 8563) of the Krishna Consciousness religion, and that the jury awarded damages, including punitive damages, in an amount calculated to bring the religion in this country to an end.

This Court has recognized that the "largely uncontrolled discretion of juries to award damages" can "inhibit the

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[5] The details of this receivership, with documentation of the impact of the judgment on the Krishna faith, is part of the record. See Petition for Writ of Supersedeas and Request for Immediate Temporary Stay, and related filings.

[6] The court-appointed receiver has estimated the value of the properties placed into receivership at between $5,125,000 and $6,750,000. See Receiver's Supplemental Report No. 2, at 4. As noted, the amount of the judgment, with interest, is about $5 million.

vigorous exercise of First Amendment freedoms" and can enable them "to punish unpopular opinion rather than to compensate individuals for injury." *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 349 (1974). Accordingly, the Court has insisted that when tortious conduct "occurs in the context of constitutionally protected activity" – such as conversion into, and practice of, religion – " 'precision of regulation' is demanded." *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982); *NAACP* v. *Button*, 371 U.S. 415, 438 (1963). A system of procedural and substantive protections has therefore been established, in legal contexts closely analogous to this, to accommodate the legitimate interests of the state in redressing injury with the requirements of the First Amendment. Those protections should be extended to the tort of intentional infliction of emotional distress, when based on the religiously motivated acts of church officials.

The judgment below violates First Amendment protections[7] in three respects, each of which raises an issue of federal constitutional law sufficiently important to warrant review by this Court. First, the jury imposed liability for the infliction of emotional distress without a finding of actual malice manifesting the intent to inflict harm on unconsenting plaintiffs. See *Hustler Magazine* v. *Falwell*, 485 U.S. 46 (1988).[8] Second, the definition of the tort of infliction of emotional distress, as communicated to the jury, encompassed constitutionally protected as well as unprotected

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[7] The First Amendment rights at stake are the free exercise of religion, the prohibition against establishment, and the freedoms of speech and association, applicable to the State through the Fourteenth Amendment. The imposition of civil liability pursuant to state tort law constitutes state action. *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 265 (1964).

[8] The jury was instructed that it could not find the defendants liable on the wrongful death claim unless they were liable for intentional infliction of emotional distress against the decedent, Jim George. 44 RT 8405-06. If the intentional infliction judgment is constitutionally flawed, the $75,000 judgment for wrongful death must therefore also be reversed.

conduct. The breadth of definition permitted – indeed, encouraged – the jury to "punish" petitioners through damages for their unconventional religious practices and beliefs, in violation of the First Amendment. See *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. at 915-18. Third, the punitive damages award is so large that its inevitable effect is to force the seizure of temples, schools, monastic living facilities, and other properties needed for religious observances. Since this burden on religious exercise is not justified by any compelling governmental interest (*Gertz*, 418 U.S. at 349), it is unconstitutional. *Frazee* v. *Illinois Department of Employment Security*, 109 S. Ct. 1514, 1518 (1989). The punitive damages award was further flawed in that it was imposed on the basis of a mere preponderance of the evidence, and without clear guidance or instructions in setting the amount. See *Gertz*, 418 U.S. at 350.[9]

These issues are of pressing importance. Although almost unknown a decade ago, tort actions against churches for emotional injuries allegedly suffered by former members and families have become commonplace, and juries have proven themselves willing to award crippling damages with little guidance or control by the courts. At least three non-mainstream religions are currently threatened with tort judgments

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[9] The libel judgment also violated federal constitutional standards. Although these issues are sufficiently settled that they might not warrant certiorari review in and of themselves, if the Court grants this petition it should also review the libel judgment for the following clear errors: (1) the instructions to the jury defined "actual malice" as including "hatred or ill will" (Pet. App. 58a n.39, R.T. 8398), contrary to *Greenbelt Cooperative Publishing Ass'n* v. *Bresler*, 398 U.S. 6 (1970), and *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964); (2) the burden of proof was placed on the defendants to prove the absence of actual malice (R.T. 8393, 8398), in violation of *Gertz*, 418 U.S. at 342, and *New York Times*, 376 U.S. at 285-86; and (3) the burden of proof was placed on defendants to prove the truth of their statements (R.T. 8399), in violation of *Philadelphia Newspapers, Inc.* v. *Hepps*, 475 U.S. 767, 776-77 (1986).

in excess of $1 million for alleged emotional injuries.[10] These loosely defined torts now constitute a most serious threat to the continued existence of unpopular minority religions.

I. LIABILITY FOR INFLICTION OF EMOTIONAL DISTRESS MAY NOT BE IMPOSED FOR RELIGIOUSLY MOTIVATED ACTS WITHOUT A FINDING OF ACTUAL MALICE MANIFESTING AN INTENT TO INFLICT HARM

The principal cause of action surviving in this case is the "intentional infliction of emotional distress." But this label is a misnomer. As interpreted by the Court of Appeal below, the *mens rea* necessary to establish liability is mere knowledge that the conduct in question was likely to cause the emotional distress. Pet. App. 39a. The jury was specifically instructed that "[d]efendant intended to inflict emotional distress if it is established he desired to cause such distress *or knew such distress substantially certain to result from his conduct.*" 44 RT 8403 (emphasis added). Thus, liability can be imposed under this tort so long as the defendants "knew" that the conduct would cause distress, whether or not they "intended" that it should.

So defined, the tort becomes a virtually uncontrolled instrument of jury discretion, "sweep[ing] within its ambit" constitutionally protected speech and conduct. *Thornhill* v. *Alabama*, 310 U.S. 88, 97 (1940); see *Airport Commissioners* v. *Jews for Jesus*, 482 U.S. 569 (1987). The practice of an unfamiliar religion can be expected – "known" – to produce distress in those who are committed to other religious faiths, particularly if their loved ones are among the followers.

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[10] See *Wollersheim* v. *Church of Scientology*, 212 Cal. App. 3d 872, 260 Cal. Rptr. 331, 344 (2d Dist. 1989) ($2.5 million); *Church Universal & Triumphant, Inc.* v. *Witt*, No. B021187 (Cal. App., 2d Dist. 1989), *cert. denied*, No. 89-672, 58 U.S.L.W. 3449 (Jan. 16, 1990) (over $1.5 million); *O'Neil* v. *Schuckardt*, 122 Idaho 472, 733 P.2d 693, 699-701 (1986) ($1 million award on invasion of privacy claim); cf. *Guinn* v. *Church of Christ of Collinsville*, 775 P.2d 766 (Okla. 1989) ($390,000 award against local congregation).

Under this definition the cause of action is thus constitutionally overbroad. *NAACP* v. *Button*, 371 U.S. 415, 432-33 (1963); *Brockett* v. *Spokane Arcades, Inc.*, 472 U.S. 491, 503 (1985). Without limitation to purposeful and malicious injuries (the historic ambit of the tort), the intentional infliction of emotional distress cannot be the basis for civil liability for the religiously motivated acts of church officials.

This Court has held that the publication of an offensive parody of a public figure cannot be the basis of liability for the intentional infliction of emotional distress in the absence of a finding of actual malice. *Hustler Magazine* v. *Falwell*, 485 U.S. 46 (1988). That decision was based on the judgment that the actual malice standard performs the same role in connection with the emotional distress tort as it does with the tort of defamation: "to give adequate 'breathing space' to the freedoms protected by the First Amendment." *Id.* at 56. The religiously motivated acts of church officials are entitled to at least as much constitutional protection as was given Hustler Magazine. Since legitimate religious activity so often involves the infliction of emotional distress, a requirement that the conduct be motivated by actual malice toward the plaintiff helps to ensure that this expansively-defined tort will not impinge upon constitutionally protected freedoms.

In the context of libel, the term "actual malice" has been given a specialized meaning: knowledge that a statement is false or reckless disregard of whether it is false. *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 279-80 (1964). But, as this Court has noted, "this does not mean that a literal application of the actual malice rule [as construed in *New York Times*] is appropriate in the context of an emotional distress claim." *Hustler Magazine*, 485 U.S. at 49. In the context of emotional distress from religiously motivated conduct, the issue of "falsity" is beside the point. Unlike defamation, which is the tort of telling falsehoods, intentional infliction of emotional distress is the tort of deliberately causing emotional suffering. Thus, the relevant meaning of actual malice in this context is closer to its traditional common law definition:

action motivated by the desire to inflict harm on others. To be actionable, the conduct must be taken not merely in the knowledge that it would cause distress, but for the purpose of causing distress. Cf. *Personnel Administrator* v. *Feeney*, 442 U.S. 256, 279 (1979) (action is purposeful if taken "at least in part 'because of,' not merely 'in spite of,' " its discriminatory effect).

It is most unlikely that the evidence in this case could have sustained a judgment for the plaintiffs under an actual malice standard. The reason the ISKCON officials concealed Robin and misled her parents was to assist her so that she could practice her chosen religion without interference. These officials may well have "known" that this would inflict emotional distress on Marcia George, but it could hardly be thought that this was their motivation.[11]

This Court's guidance is needed to inform the decisions of the state and lower federal courts faced with claims of emotional injury at the hands of church officials. In *Paul* v. *Watchtower Bible & Tract Society*, 819 F.2d 875 (9th Cir.), *cert. denied*, 484 U.S. 926 (1987) the Ninth Circuit recognized that the breadth of the tort of intentional infliction is a danger to religious liberty. "Intangible or emotional harms cannot ordinarily serve as the basis for maintaining a tort cause of action against a church for its practices," according to the court, for "[w]ithout society's tolerance of offenses to

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[11] This does not mean that Marcia George was without legal redress for petitioners' acts "to assist Robin in running away and to conceal her from her parents." Pet App. 39a. Under California law, concealing a minor from her parents is a violation of California Civil Code § 49 (interference with personal relations), a more narrowly defined tort that does not present the substantial overbreadth problems of the emotional distress tort. Marcia George, however, waited until after the statute of limitations had run to file suit on this cause of action, and it was therefore dismissed on demurrer before trial. The contours of the intentional infliction of emotional distress tort should not be twisted merely because the plaintiff allowed the statute of limitations to lapse on the claim she should have made.

sensibility, the protection of religious differences mandated by the first amendment would be meaningless." *Id.* at 883. The court concluded that a plaintiff would have to present "evidence of actual malice," which it interpreted in this context to mean that the defendants' allegedly tortious conduct was "motivated by reasons unrelated to their interpretation of the dictates of their religion." *Id.* at 883 n.7.[12]

By contrast, the court below imposed no constitutional limitation on the emotional distress cause of action,[13] on the ground that any danger to constitutionally protected conduct was obviated by the requirement of "outrageousness":

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[12] Other decisions that have imposed requirements of actual malice on the part of church officials or analogous protections under the First Amendment include: *Hester* v. *Barnett*, 723 S.W.2d 544, 555, 560, 563 (Mo. Ct. App. 1987) (various claims for emotional injury limited by requirement of malice or intention to injure); *Radecki* v. *Schuckardt*, 50 Ohio App. 2d 92, 361 N.E. 2d 543, 545 (1976) (actual intention to break up a marriage required to establish tort of alienation of affections against religious official); *Rasmussen* v. *Bennett*, 228 Mont. 106, 741 P.2d 755, 758 (1987) (statements made in course of church disciplinary proceeding protected in absence of malice); *McNair* v. *Worldwide Church of God*, 197 Cal. App. 3d 363, 377-78, 242 Cal. Rptr. 823, 832-33 (2d Dist. 1988) (imposing *New York Times* actual malice standard in defamation action against religious body); *Christofferson* v. *Church of Scientology*, 57 Or. App. 203, 644 P.2d 577, 590 (1981), *review denied*, 293 Or. 456, 650 P.2d 928 (1982), *cert. denied*, 459 U.S. 1206 (1983) (reversing emotional distress judgment for lack of evidence of force or threats of force).

[13] Other courts refusing to extend First Amendment protection in analogous contexts include *Guinn* v. *Church of Christ of Collinsville*, 775 P.2d 766, 783 (Okla. 1989) (religiously motivated acts against a former member are entirely "undeserving of First Amendment protection" if performed without the plaintiff's consent); *Madsen* v. *Erwin*, 395 Mass. 715, 481 N.E.2d 1160, 1167 (1985) (allowing plaintiff to replead a claim for emotional distress against religious organization that terminated her employment because of her sexual orientation, stating that "a clergyman may not with impunity defame a person, intentionally inflict serious emotional harm on a parishioner, or commit other torts"); *Murphy* v. *ISKCON*, A.C. No. 88-P-1209 (Mass. Super. Ct. 1988) (appeal pending)

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> Although the jury was only instructed in general terms on intentional infliction of emotional distress, these instructions did specify that the actionable conduct had to be "extreme and outrageous" going beyong "all possible bounds of decency so as to be regarded as atrocious and utterly intolerable in a civilized community." (44 RT 8402.)

Pet. App. 40a. But as this Court has observed, "the pejorative description 'outrageous' does not supply" a "principled standard" for distinguishing between constitutionally protected and unprotected speech. *Hustler Magazine* v. *Falwell*, 485 U.S. at 55; see *Boos* v. *Barry*, 485 U.S. 312, 322 (1988). Indeed, " '[o]utrageousness' in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression." *Hustler Magazine*, 485 U.S. at 55.

The same is true, perhaps more so, in the area of religious conduct, where it is not uncommon for minority religious practices to be deemed "outrageous" by mainstream culture. One is forced to wonder whether the jury would have considered it so "outrageous" if Roman Catholic nuns had shielded Robin from parents who had broken her rosary, burned her Bible, and forbidden her to pray. Because of its inherent subjectivity, an "outrageousness" standard "runs afoul of [the Court's] longstanding refusal to allow damages to be awarded because the speech in question may have an adverse emotional impact on the audience." *Id.*

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($560,000 judgment for emotional distress based on religious teaching allegedly demeaning to women); *Carrieri* v. *Bush*, 69 Wash. 2d 536, 419 P.2d 132, 135-37 (1966) (allowing suit for alienation of affections based on religious teachings); *O'Neil* v. *Schuckardt*, 112 Idaho 472, 733 P.2d 693, 699-701 (1986) (same, under tort of invasion of privacy).

II. LIABILITY FOR TORTIOUS CONDUCT MAY NOT BE IMPOSED IF THE DEFINITION OF THE TORT GIVEN TO THE JURY ENCOMPASSES CONSTITUTIONALLY PROTECTED AS WELL AS UNPROTECTED CONDUCT

The "centerpiece" of this case at trial was the plaintiffs' now-discredited theory that petitioners "brainwashed" Robin into a religion of which her parents heartily disapproved. Pet. App. 33a. Proselytizing, however, is constitutionally protected conduct and, as the Court of Appeal held (Pet. App. 35a), it cannot be a basis for civil liability. *McDaniel* v. *Paty*, 435 U.S. 618, 626 (1978) ("the free exercise of religion unquestionably encompasses the right to preach, proselyte, and perform other similar religious functions"); *Fowler* v. *Rhode Island*, 345 U.S. 67, 70 (1953) (court may not control or regulate sermons). The various religious practices to which Robin was exposed and which she willingly embraced, including living in the religious community, are similarly protected. Pet. App. 34a-35a. If petitioners' actions had been conducted without concealment of Robin or deception of Robin's parents, there would have been no legitimate basis for civil damages against petitioners.[14]

It is well established that neither criminal nor civil liability may be imposed on the basis of conduct that includes constitutionally protected speech. *E.g.*, *Street* v. *New York*, 394 U.S. 576, 585-90 (1969); *Stromberg* v. *California*, 283 U.S. 359 (1931). In *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982), for example, the evidence showed that participants in an NAACP-led boycott of commercial businesses in Claiborne County, Mississippi, had committed acts of violence that fell outside the protection of the First Amendment (*id.* at 916). This Court held, however, that "the

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[14] Her parents could have sought legal protection for their presumptive rights to physical custody of Robin, in which action Robin's maturity and her parents' interference with her chosen religious practices would presumably have been relevant to the final determination. But that proceeding would have been between Robin and her parents.

presence of activity protected by the First Amendment imposes restraints on the grounds that may give rise to damages liability." *Id.* at 916-17. It reversed the damages against the NAACP and its co-defendants in their entirety, finding that the pleadings, arguments of counsel, and jury instructions had not adequately defined which elements of alleged injury were "proximately caused by unlawful conduct" and which resulted from constitutionally protected activity. *Id.* at 917-18. The same principle, as extended to religious conduct and beliefs, necessitates reversal of the emotional distress judgment in this case in its entirety.

The Court of Appeal, however, crafted a novel exception to this principle. It held that the tort element of "outrageousness" sufficed to ensure that the verdict was based entirely on petitioners' wrongful acts and not on Robin's conversion. After quoting the jury instructions on "outrageousness," the court stated that "constitutionally protected proselytization hardly fits this description," and that "[i]t is inconceivable that the jury could have regarded the preaching activities of orthodox religions – even to minors – as 'extreme and outrageous.' " Pet. App. 42a.[15] On this basis, the court rejected petitioners' *Claiborne Hardware* claim. This ruling is directly contrary to this Court's more realistic observation in *Hustler Magazine*, 485 U.S. at 55, that the "outrageousness" element of the intentional infliction tort "would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression."

The Court of Appeal further concluded that any error at trial could be obviated by its own independent "review of the record," along with the determination by the trial judge to reduce the size of the award. On the basis of this review of

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[15] The court's assumption that the jury would see Krishna Consciousness as an "orthodox" religion is nothing short of astonishing, especially in light of the lengthy testimony that portrayed the religion as an abusive form of mind control. A jury might well reject the suggestion that the proselytizing activities of an "orthodox" religion were "outrageous," but there is every reason to believe that unorthodox religions are given a far different reception.

the record (which, we would add, was ludicrously inadequate[16]), the court believed it was "able to say 'with certainty' that Robin's conversion – and defendants' constitutionally protected actions to facilitate it – were not the basis for the judgment in favor of Marcia." Pet. App. 43a.

This *post hoc* reconstruction of the record is impossible to square with *Claiborne Hardware* and with the petitioners' right to have all necessary factual judgments made by the designated fact-finder, in this case the jury. "[W]here a jury's general verdict *may* have rested upon grounds improper for First Amendment reasons, a reviewing court will not pause to speculate whether the jury's verdict was actually reached on other, and permissible, grounds." *Founding Church of Scientology* v. *United States*, 409 F.2d 1146, 1164 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969) (emphasis in original). As this Court has stated, a "*post hoc* explanation" for the verdict is simply not "appropriate." *Street*, 394 U.S. at 586.

Nor is the verdict saved by the trial court's remittitur, as held by the Court of Appeal. Pet. App. 43a. There is no indication in the record that the trial court's determination of the proper level of damages was predicated on a clear demarcation between constitutionally protected and unprotected conduct. "[I]f the ground of the judge's decision cannot be ascertained from the record, then the danger of unconstitutional conviction is not significantly less than in the cases just discussed [involving jury verdicts]." *Street*, 394 U.S. at 586.[17] In any event, a reduction in the size of the award cannot remedy a legal defect in the finding of liability.

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[16] We detail our reasons for this assessment below. The Court of Appeal's evaluation of the record is not binding on this Court. *Street* v. *New York*, 394 U.S. at 589.

[17] The Court of Appeal reversed the burden of proof on this question. According to this Court, the judgment even in a bench trial must be reversed if "the ground of the judge's decision cannot be ascertained from the record" (394 U.S. at 586). The Court of Appeal, by contrast, operated on the assumption that it must affirm the judgment unless it found a "basis in the record to assume the trial judge misunderstood the proper basis for an award of emotional distress damages." Pet. App. 43a.

That the jury's verdict was based on an intertwining of constitutionally protected activity (proselytizing) and unprotected activity (deception and concealment) is evident from an examination of five components of the lawsuit: (1) the complaint; (2) the jury instructions; (3) the arguments of plaintiffs' counsel; (4) the evidence of emotional distress; and (5) the joint nature of the punitive damages verdict. See *Claiborne Hardware*, 458 U.S. at 917-18 ("the pleadings, arguments of counsel, and jury instructions" should be examined to determine whether damages were properly restricted).

1. Plaintiffs' first amended complaint was replete with allegations of emotional distress suffered by Robin's parents on account of their disapproval of Robin's choice of religion and the religious practices they understood her (correctly or incorrectly) to be engaged in. See, *e.g.*, First Amended Complaint, 2 CT 434, ¶ 16, lines 2-3 (Robin's parents "disapproved of the changes in [Robin's] life and attitude"); *id.* at lines 4-5 ("they believed that such early rising was deleterious to her health and school work"); *id.*, ¶ 17, lines 10-11 (they "were apprehensive that [Robin] was becoming too deeply involved"); *id.*, p.8, lines 14-15 (Marcia George "disapproved of [Robin's] gradual submersion into the Hare Krishna Temple life"). As should be obvious, none of these allegations has anything to do with either deception or concealment. Each relates solely to Robin's conversion. Since allegations regarding constitutionally protected activity were intermingled with allegations of deception and concealment *in the same counts, with no differentiation or separation*, a verdict based on this complaint cannot stand. Cf. *Street*, 394 U.S. at 588 (when charges are presented in separate counts of the indictment, the trier of fact may be assumed to have "considered each count on its own merits and separately from the others").

2. The danger of jury misunderstanding of the tort of intentional infliction of emotional distress is great, no matter how careful the instructions may be. Lacking formal training in constitutional law, a jury might well conclude that even core religious activities (such as chanting or *sankirtan*) can be the basis for civil liability where they are known to produce

emotional distress to someone and the jury finds them to be "outrageous." But the instructions to the jury completely failed to explain the extent and scope of petitioners' constitutional rights. See 44 RT 8414-15. Even the Court of Appeal conceded that "the jury was only instructed in general terms on intentional infliction of emotional distress" (Pet. App. 42a).[18] Nothing in the instructions informed the jury that petitioners had a constitutional right to proselytize Robin and to persuade her to comply with the tenets of the Krishna religion; and nothing helped the jury to distinguish petitioners' constitutionally protected conduct from their unprotected acts of deception and concealment.

3. The arguments of plaintiffs' attorney left no doubt that the emotional distress cause of action was not only "intertwined with," but entirely dependent on, constitutionally protected conduct by petitioners and by Robin. As noted above, the Court of Appeal correctly overturned the jury's verdict on Robin's false imprisonment claim on the ground that "Robin's brainwashing theory of false imprisonment is no more than an attempt to premise tort liability on religious practices the Georges find objectionable. Such a result is simply inconsistent with the First Amendment." Pet. App. 35a. Yet by the court's own admission, the false imprisonment claim was the "centerpiece" of the entire case (*id.* at 23a).

Plaintiff's counsel advised the jurors during closing argument that they should decide the false imprisonment claim first, because "if there was no false imprisonment that the rest of this stuff is a lot of hogwash, because that means that

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[18] Indeed, aspects of the instructions (adopted over petitioners' objection) exacerbated the jury's confusion. For example, the trial court instructed the jury that "the United States Constitution recognizes the fundamental interest of parents to guide religious future and education of children," (44 RT 8415), an instruction that, while accurate as a limit on *governmental action*, is highly misleading as to the actions of private parties. This instruction may well have caused the jury to believe that attempts by outsiders, such as petitioners, to convert minors to a religion other than that of their parents violates the parents' constitutional rights.

Robin decided to run away from home and torment her parents and its all her fault anyway." 44 RT 8526-27, quoted at Pet. App. 23a-24a n.15.[19] This argument demonstrates that the emotional distress claim was based primarily, if not exclusively, on the Georges' reaction to Robin's conversion; that is why counsel informed the jury that if Robin's conversion was voluntary then the "torment" her parents suffered was "all her fault anyway." This contradicts the Court of Appeals' *post hoc* theory that the jury awarded damages based solely on petitioners' acts of deception and concealment.

The remainder of plaintiffs' counsel's closing argument was studded with derisive and inaccurate references to Krishna beliefs and religious practices. He exhorted the jury to punish the "pernicious evil" of Krishna Consciousness. 45 RT 8653. In an appeal to the jurors' fears and prejudices, he invited them to "imagine your child going to the Hare Krishna temple," where they would be told that their parents are "karmi meat eating demon[s]." *Id.* at 8499. He described the sacred religious ritual of *sankirtan* as sending children "out on the streets to lie and to cheat and to steal so that they can fill the coffers of the quote, unquote, church." *Id.* at 8653. Putting aside the slanderous quality of counsel's description of a bona fide religion, which has no place in the American legal system, it is evident that the plaintiffs' claim of emotional injury was based in large part on the "reprehensible" character of petitioners' religion.

4. This conclusion is bolstered by an examination of Marcia George's own testimony about the source of her emotional distress. Although she testified at great length about her

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[19] In a similar vein, plaintiffs' counsel told the jury that "[t]he nut of this case, the thing around which this whole case revolves or turns, is false imprisonment." In absence of a false imprisonment finding, "it would not be fair to return a verdict for inflicting emotional distress, or causing Jim George's death. That would mean Robin George was responsible for her father's death, not the defendants. The nut of the case revolves around false imprisonment. Other things then fall into place, or they don't." 44 RT 8480.

distress at every aspect of Robin's experience from conversion to remembrance, only a few isolated remarks were addressed to her distress about the deception practiced by the few Krishna officials with whom she had contact. Indeed, Marcia George testified (6 RT 887) that the date the petitioners "first inflict[ed] emotional distress upon her" was "[p]ossibly a month or so prior to" Robin's departure from home. Moreover, she said that her husband's face had "turned white" and that he had begun to "shake" upon learning that Robin had left home and surmising that she had gone to the temple. 4 RT 560-61. These events occurred before any deception or concealment could have begun.

Marcia George's testimony also demonstrates that the emotional distress she and her husband experienced was in large part attributable to their negative feelings about Krishna religious practices, and not to acts of deception by Krishna officials. For example, she explained that her husband often awakened about 3:30 a.m. and worried about Robin because "he knew she would be getting up and chanting" about that time. 29 RT 5591. She testified that during the three week period Robin had been returned home the parents were "distressed" at her appearance and "worried" and "afraid" that Robin would "obliterate herself by returning back to a temple" (4 RT 675). This was when the parents chained Robin to a toilet at night to prevent her from escaping and burned her holy books. (*id.* at 676-77, 962). Indeed, the trial court admitted Marcia's testimony concerning the "series of [traumas] they experienced while Robin was within ISKCON" solely on the condition that plaintiffs establish a *prima facie* case that Robin had been falsely imprisoned. 4 RT 625-26. This further demonstrates that the emotional distress claim was dependent on the false imprisonment claim, which was based on constitutionally protected beliefs and conduct.

5. The decision to award punitive damages for intentional infliction jointly to Robin and Marcia George is further proof that the jury conflated constitutionally protected with unprotected conduct, and awarded damages for both. Since the Court of Appeal correctly concluded that all claims by Robin (other than in her capacity as heir to Jim George) were

based on constitutionally protected conduct, it follows that the jury's award of punitive damages to Robin and Marcia jointly on the intentional infliction of emotional distress claims *must* have been based in part on constitutionally protected conduct.

Examination of these five components of the trial leaves no room for doubt that the verdict was based on an intertwining of constitutionally protected and unprotected conduct. This is a characteristic feature of the rash of cases alleging "brainwashing" and other torts involving religiously-based emotional injury.[20] By introducing evidence of unconventional religious teachings and practices and portraying them in the most pejorative possible light, plaintiffs' lawyers are able to inflame the fears and prejudices of the jury. Even when a portion of the judgment is based on unprotected conduct, the effect is to inflate the size of the award beyond all proportion to the actionable injury caused. Extension of the principle of *Street*, *Stromberg*, and *Claiborne Hardware* to this context would do more to prevent these shameful assaults on minority religions than any other single rule of law.

III. THE PUNITIVE DAMAGES AWARD VIOLATED THE FIRST AMENDMENT AND THE DUE PROCESS CLAUSE

The temples, schools, monastic living quarters, and other religious facilities of the Hare Krishna religion in much of North America are presently in the hands of a court-appointed receiver, and will be sold if the judgment below is not reversed. Thousands of innocent devotees and worshippers (both adherents to Krishna Consciousness and adherents to other denominations of Hinduism who worship in Krishna temples) will be left without places in which to worship or to live in accordance with their faith. Plaintiffs have even attempted to seize petitioners' religious publishing entity, and with it control over petitioners' holy books. Affidavits in the record establish that execution of this judgment would render

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[20] See cases listed at note 10, *supra*.

the exercise of Krishna Consciousness virtually impossible for many of its adherents.

The judgment below thus threatens a devastating blow to the free exercise of religion. See *Yonkers Racing Corp.* v. *City of Yonkers*, 858 F.2d 855, 871 (2d Cir. 1988), *cert. denied*, 109 S.Ct. 1527 (1989) (when government seizure of property "would substantially affect religious practice," it raises a free exercise claim); *Pillar of Fire* v. *Denver Urban Renewal Authority*, 181 Colo. 411, 509 P.2d 1250 (1973) (same). Any list of infamous acts of religious oppression would include Henry VIII's confiscation of Catholic monasteries and the Romans' destruction of the Temple in Jerusalem in 70 A.D. See also *Late Corporation of Church of Jesus Christ of Latter Day Saints* v. *United States*, 136 U.S. 1 (1890) (confiscation of Mormon Church property). These acts of persecution would be no less infamous if they had been imposed pursuant to decisions by Roman or Protestant juries that Jewish, Catholic, or Mormon religious practices were "outrageous."

Punitive damages pose a particular threat to the free exercise of religion because they enable jurors "to use their discretion selectively to punish expressions of unpopular views." *Gertz*, 418 U.S. at 350. As illustrated in this case, plaintiffs' counsel can play upon latent fears and prejudices of the jury ("imagine *your* child going to a Hare Krishna temple") to obtain punitive judgments wholly disproportionate to the alleged wrongdoing. 44 RT 8499. Because of similar concerns, this Court has limited the availability of punitive damages in libel cases (*Gertz*, *supra*), and against labor unions for violation of the duty of fair representation. *Electrical Workers* v. *Foust*, 442 U.S. 42, 50-51 n.14 (1979). We ask this Court to consider whether religious bodies are entitled to comparable protection.

Moreover, when punitive damages are imposed on a religious body, the effect is to punish "blameless or unknowing" adherents of the religion, "who took no part in the commission of the tort." *Newport* v. *Fact Concerts, Inc.*, 453 U.S. 247, 267 (1981). Here, thousands of devotees and worshippers will be expelled from their temples and ashrams for the deeds of a few isolated ISKCON officials who are no

longer affiliated with the religion.[21] Because of similar concerns, the Court has barred imposition of punitive damages against municipalities under 42 U.S.C. 1983 (*id.*) and labor unions under the duty of fair representation (*Electrical Workers, supra*).

While we do not dispute that church properties must sometimes be taken to recompense individuals for actual injuries caused by a church, this Court has held that the "States have no substantial interest in securing for plaintiffs . . . gratuitous awards of money damages far in excess of any actual injury." *Gertz*, 418 U.S. at 349. Punitive damages "are in effect a windfall to a fully compensated plaintiff." *Fact Concerts*, 453 U.S. at 267. "Neither reason nor justice suggests that such retribution should be visited upon the shoulders of blameless or unknowing [worshippers]." *Id.* Since the punitive damages judgment imposes a devastating burden on the free exercise of religion, justified by "no subtantial [state] interest," the judgment below is a clear violation of the Free Exercise Clause.

Even assuming that a punitive damages judgment that requires seizure of properties needed for religious observance is not a *per se* violation of the Free Exercise Clause, the procedures for determining whether to impose punitive damages against religious bodies and how to calculate their amount require scrutiny under the First Amendment and the Due Process Clause. This Court should consider two specific limitations.

First, the jury should not have been permitted to award punitive damages for nonphysical injuries allegedly caused by the religiously motivated acts of church officials without clear and convincing proof of each element of the punitive damages claim. In recent years, many state legislatures and

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[21] The punitive damages were awarded jointly against all defendants, without any attempt to apportion them according to relative guilt. Pet. App. 77a-78a. This procedure vitiated any connection between culpability and damages and made "precision of regulation" (*Claiborne Hardware*, 458 U.S. at 916) impossible. See, *e.g.*, *Embry* v. *Holly*, 293 Md. 128, 442 A.2d 966 (1982) (adopting majority rule requiring apportionment of punitive damages).

courts have concluded that the "preponderance of the evidence" standard is insufficient to justify awards of punitive damages and have required application of the "clear and convincing evidence" standard.[22] Moreover, in the analogous context of defamation actions, this Court has held that the First Amendment bars awards of punitive damages without clear and convincing evidence of actual malice. *Gertz*, 418 U.S. at 350 (private defamation plaintiff may not recover punitive damages under a showing "less demanding" than that of *New York Times*).

This procedural safeguard should be extended, as a constitutional matter under the First Amendment, to the tort of intentional infliction of emotional distress as alleged against religious groups. "Increasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate [determinations] will be [made]." *Addington* v. *Texas*, 441 U.S. 418, 427 (1979).

Second, the jury must be given workable standards for determining the size of a punitive damages award, to ensure that the award is not based on improper factors, such as hostility and religious prejudice. Five Justices of this Court have suggested that even in an ordinary tort case the grant of standardless discretion to a jury to impose an award of punitive damages violates due process. *Browning-Ferris*

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[22] See, *e.g.*, *Canada Dry Corp.* v. *Nehi Beverage Co.*, 723 F.2d 512, 525 (7th Cir. 1983) (applying Indiana law); *Acosta* v. *Honda Motor Co.*, 717 F.2d 828, 839 (3d Cir. 1983) (applying Virgin Islands law); *Roginsky* v. *Richardson-Merrell, Inc.*, 378 F.2d 832, 850-51 (2d Cir. 1967) (applying New York law); *Linthicum* v. *Nationwide Life Ins. Co.*, 150 Ariz. 326, 723 P.2d 675, 680-81 (1986); *Masaki* v. *General Motors Corp.*, 780 P.2d 566, 574-75 (Haw. 1989); *Travelers Indemnity Co.* v. *Armstrong*, 442 N.E.2d 349, 358-63 (Ind. 1982); *Tuttle* v. *Raymond*, 494 A.2d 1353, 1362-63 (Me. 1985); *Wangen* v. *Ford Motor Co.*, 97 Wis. 2d 260, 294 N.W. 2d 437, 457-58 (1980); Alaska Stat. § 09.17.020 (Supp. 1987); Cal. Civ. Code § 3294 (Supp. 1988); Kan. Stat. § 60-3701 (Supp. 1987); Ky. Rev. Stat. Ann. § 27-1-221 (1985); Ohio Rev. Code § 2307.80 (Supp. 1987); Or. Rev. Stat. § 30.925(1) (1979); see also Model Uniform Product Liability Act § 120(A), 44 Fed. Reg. 62,748 (Oct. 31, 1979).

Industries v. *Kelco Disposal, Inc.*, 109 S. Ct. 2909, 2923 (1989) (Brennan, J., joined by Marshall, J.); *id.* at 2924 (O'Connor, J., joined by Stevens, J.); *Bankers Life & Casualty Co.* v. *Crenshaw*, 108 S. Ct. 1645, 1656 (1988) (O'Connor, J., joined by Scalia, J.). Where precious First Amendment rights are affected by the outcome, the development of standards is all the more important. While substantive content of the standards must be left in the first instance to the state courts on remand, it should be noted that courts in other jurisdictions have been able to develop standards for punitive damages that will serve to cabin jury discretion and decrease the probability of jury prejudice. *E.g.*, *Rowlett* v. *Anheuser-Busch, Inc.*, 832 F.2d 194, 206-07 (1st Cir. 1987); see also *Browning-Ferris*, 109 S. Ct. at 2934 (O'Connor, J., dissenting).

In this case, as the trial court acknowledged, "the jury lacked some guidelines upon which to predicate its award of punitive damages." Pet. App. 86a. The jury was instructed that there is "no fixed standard as to the amount of such punitive damages." The amount is "in the discretion of the jury." 44 RT 8417. The jury was then told that it should consider the following factors: "the reprehensibility of the conduct of the defendant; the amount of punitive damages which will have a deterrent effect on the defendant; that the punitive damages must bear reasonable relation to the actual damage." *Id.* These standards are similar to those Justice Brennan described as "scarcely better than no guidance at all." *Browning-Ferris*, 109 S. Ct. at 2923.[23]

With no workable standards to guide its judgment, the jury awarded over $29 million in punitive damages, among the highest punitive damages verdicts in California history. Even after reduction by the trial court and partial invalidation by the Court of Appeal, the award exceeded all possible

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[23] The standards in *Browning-Ferris* were: "you may take account of the character of the defendants, their financial standing, and the nature of their acts." 109 S. Ct. at 2923.

legitimate bounds.[24] It is important to remember that the principal cause of the Georges' distress was the decision of their daughter to adopt the Krishna Consciousness religion, a decision the Court of Appeal found to have been entirely voluntary. Pet. App. 23a-38a. Yet the punitive damages imposed on petitioners for their supporting role in this intra-family drama total $2.5 million. To put this judgment into perspective, if someone enticed a minor into prostitution, instead of the Hare Krishna religion, and were convicted by proof beyond a reasonable doubt, the maximum penalty under California law would be one year in prison and a $2,000 fine. Cal. Penal Code § 266.

The free exercise of religion should not be at risk of numbers picked by juries out of thin air. The religion of Krishna Consciousness is recognized by all authorities as "a bona fide religion with roots in India that go back thousands of years." *People* v. *Murphy*, 98 Misc.2d 235, 413 N.Y.S. 2d 540, 544 (Sup. Ct. 1977); see *ISKCON* v. *Barber*, 650 F.2d 430 (2d Cir. 1981). It is not, as plaintiffs' counsel told the jury, a "quote, unquote, church." 45 RT 8653. It is not a "pernicious evil." 44 RT 8563. It is not to be treated in a court of law as if it were "Dracula." 44 RT 8513. Under the First Amendment of the United States Constitution, it is not – at least, it is not supposed to be – subject to liquidation by an uninstructed and inflamed California jury.

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[24] The trial judge's remittitur did not cure the error, since it also was not based on specific and intelligible standards. See Pet. App. 87a ("a significantly lesser award, such as the one suggested by the court, will have the effect of deterrence").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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FEBRUARY 28, 1990

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

Fourth Appellate District, Division One,
No. D007153, S012425

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

ROBIN GEORGE Et Al., Respondents

v.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS Et Al., Appellants

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(Filed Nov 30, 1989)

Appellants' petitions for review DENIED.

The Reporter of Decisions is directed not to publish in the Official Appellate Reports the opinion in the above-entitled appeal filed August 30, 1989, which appears at 213 Cal.App.3d 729. (Cal Const., Art. VI, Section 14; Rule 976, Cal. Rules of Court.)

LUCAS
Chief Justice

[Opinion of Court of Appeal, Aug. 30, 1989, **As modified Sept. 29, 1989.**]

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROBIN GEORGE, et al.,	)	
	)	
Plaintiffs, Respondents and Cross-Appellants,	)	
	)	
v.	)	D007153
	)	
INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA, etc., et al.,	)	
	)	
Defendants, Appellants and Cross-Respondents.	)	(Super. Ct. No. 277565)
	)	

Appeal and cross-appeal from a judgment of the Superior Court of Orange County, James A. Jackman, Judge. Affirmed in part, reversed in part.

Alan G. Martin, Kent L. Richland, Feris M. Greenberger, Robert A. Olson, Greines, Martin, Stein & Richland, W. Marshall Morgan, Walter M. Yoka, Morgan, Wenzel & McNicholas, David M. Liberman and Larry J. Roberts for Defendants, Appellants and Cross-respondents.

Chaitanya Tanna, Bhishma K. Agnihotri, Edward McGlynn Gaffney, Jr., Morton B. Jackson, MacDonald, Halsted & Laybourne, Barry A. Fisher, Robert C. Moest, Fleishman, Fisher & Moest, Carol A. Sobel, Paul L. Hoffman, Mark D. Rosenbaum and Mark Mausert as Amici Curiae on behalf of Defendants, Appellants and Cross-respondents.

Louis E. Goebel, Cheryl Shensa, Goebel, Shensa & Beale, David A. Niddrie and Procopio, Cory, Hargreaves & Savitch for Plaintiffs, Respondents and Cross-appellants.

Plaintiff Robin George and her mother, Marcia George, brought this action against four corporate entities of the International Society for Krishna Consciousness (ISKCON)[1] and two individual Krishna officials[2] alleging the defendants "brainwashed" Robin into joining the Krishna movement and thereafter conspired to conceal her from her parents. A jury agreed, awarding the Georges compensatory and punitive damages in excess of $32 million, a figure which was later substantially reduced by the trial court. Robin's compensatory award in excess of $1.8 million included damages for false imprisonment, intentional infliction of emotional distress, wrongful death, and libel. Marcia George's $1,510,000 compensatory award was based on emotional distress and libel.

In a general sense, we conclude that defendants' principal acts constituted torts against Marcia George but not against Robin. Accordingly, we reverse the judgment in favor of Robin to eliminate the damages awarded as to all causes of action except the cause of action for wrongful death. At the same time, we reject defendants' multifaceted attacks on the judgment in favor of Marcia based on libel and intentional infliction theories. We also reject defendants' claim of evidentiary and jurisdictional error as well as assertions that the amount of punitive damages awarded were excessive. As we shall explain in greater detail, the result of our decision requires the trial court to enter judgment in favor of Robin for $75,000 (damages for wrongful death) and permits Marcia's judgment to remain at the trial court-reduced sum of $2,910,000 (emotional distress: $400,000 compensatory, $2 million punitive; libel: $10,000 compensatory, $500,000 punitive).

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[1] The four corporate defendants are ISKCON of California, ISKCON of New York (which controlled the Krishna temples in California before the formation of ISKCON of California), ISKCON of Louisiana and ISKCON of Canada.

[2] Defendant Roy Christopher Richard was president of the Krishna temple in Laguna Beach. Defendant Nico Kuyt was president of the Krishna temple in New Orleans.

FACTUAL AND PROCEDURAL BACKGROUND

By most standards of American culture, Robin George was a normal 14 year old in the summer of 1974. The George family had moved to Cypress, California when Robin was two years old. Robin was enrolled in a program for mentally gifted children while in elementary school. In junior high school Robin received above average grades and was editor of the school newspaper.

While Robin was growing up, the Georges attended a local Lutheran church where Marcia taught Sunday school. Robin was confirmed in the Lutheran church in 1973. At about this same time, Robin talked with her parents about investigating other religions. The Georges suggested Robin go ahead with her confirmation but assured her she was free to inquire into other religious faiths afterwards. As a result, in early 1974, Robin investigated various beliefs by going to Catholic, Greek Orthodox, and Baptist churches and a Jewish synagogue, among others.

In the spring of 1974, Jim George was diagnosed as having a weak heart. Concerned about her father, Robin began extensive reading on the relationship between exercise, diet and heart condition. She prepared special meals for him and enrolled with him in a yoga class.

Initial Contacts With the Krishnas

Following her completion of ninth grade in 1974, Robin's best friend was Caron Dempsey. Dempsey, two years older than Robin, had an 18 year-old boyfriend, John Herger. One day in July, Robin was planning to go to the beach with Dempsey and Herger. Caron suggested instead that they visit the Hare Krishna temple in Laguna Beach. Herger dropped the two girls off. Inside the temple Robin and Caron sat down and meditated. They thought "that's what you should do in a temple." As the girls were getting ready to leave, a woman dressed in a sari approached, welcomed them, and insisted that they eat some mashed avocados and dates which she referred to as "prasadam." The woman also invited the girls to return to the temple the following Sunday for a "love feast."

Robin had no intention of returning to the temple. The following week, however, Caron Dempsey came to Robin's house "dressed like a Hare Krishna." Caron told Robin she had spent the night at the temple and had decided to join the Hare Krishnas. Robin tried unsuccessfully to talk Caron out of her decision. A week later Robin agreed to go to the temple with Caron to learn more about the group. Beginning in August, Robin visited the temple weekly, usually on Sundays. At first she talked informally with various Krishna devotees and discussed their religious beliefs. Toward the end of August, Robin began attending occasional congregational meetings and group discussions concerning the tenets of the Krishna faith.

During their visits to the temple, Robin and Caron met and talked with various Krishna devotees including defendant Roy Christopher Richard, the president of the Laguna Beach temple. Richard was known by his Krishna name, "Rsabadeva." In September 1974, Marcia George visited the Laguna Beach temple and spoke with Rsabadeva, reminding him that Robin was "at a very susceptible age."

By October Robin had begun to adopt the practices of the Krishna faith. She began braiding her hair and wore a sari while attending her high school classes. She constructed a Hindu-style alter in her bedroom and arose at approximately 2:30 a.m. every morning to pray and chant.

Marcia and Jim George were quite concerned with Robin's acceptance of the Krishna religion and the resulting change in her behavior. Marcia again visited the temple in October to discuss the situation with Rsabadeva. She expressed concern that Robin's religious practices were beginning to interfere with her schooling. Rsabadeva assured Marcia that ISKCON had no interest in interfering with Robin's education.

By early November, Jim and Marcia directed Robin to dismantle her altar, forbade her from rising early in the morning to chant, and asked her to modify her diet. At about the same time, Rsabadeva had a private meeting with Robin and Caron in his office at the temple. After complimenting them on their acceptance of the Krishna faith, Rsabadeva told

the girls "if you really are sincere about seeking God and being true devotees . . . you can't live at home and practice this religion. . . .You have got to live in a temple facility." He explained, "Your parents are demons and they will pull you away from Krishna. The closer you get to Krishna, the more your parents will try to pull you away." Rsabadeva then asked both girls if they thought their parents would object if they became devotees and went to live in the temple. Both said yes. He then asked, "Do they have enough money to hire a detective to try to find you?" The girls replied they didn't think so. As the conversation continued, Rsabadeva told the girls that their parents were not their real parents and that horrible things would happen to them in their next life if they continued to live with people like their parents who ate meat, a practice the Krishnas believe is fundamentally sinful. The girls were told that it was permissible to deceive nonbelievers like their parents because they were incapable of seeing the truth. Finally, Rsabadeva suggested that the girls run away from their parents. "Leave home" he said, "and we will send you someplace where your parents will never find you."

Robin Runs Away to New Orleans

During the next two weeks, Robin formulated a plan to run away from home and informed Rsabadeva of her intention. On Saturday, November 16, 1974, Robin packed some belongings and left her house through the bedroom window. She met Caron Dempsey and John Herger at a school a few blocks away and the trio drove directly to the Laguna Beach temple. They were met there by Rsabadeva who instructed them to drive to the Krishna temple in San Diego. He told Robin she had to go to San Diego because her parents would be "coming here looking for you as soon as they find out that you are gone." In San Diego, he said, it would be harder for her parents to find her. He instructed her to call him the following day to receive further instructions.

Arriving in San Diego about midnight, Robin Caron and John slept for several hours at the San Diego temple and arose early with the other devotees for chanting and other activities

as well as to prepare for a Krishna festival which was to be held in Balboa Park that day. Robin called Rsabadeva at 8 a.m. He told her that Ksudhi, a devotee from the Laguna Beach temple, would be arriving in San Diego later that day and would purchase an airline ticket for her to fly to New Orleans. Upon arrival Robin was to phone the New Orleans temple president, Nityananda, who would arrange to have her picked up.

A short time later several Laguna Beach devotees including Ksudhi and his wife Dhatreyi arrived at the San Diego temple. That afternoon they went to the Balboa Park festival with Robin, Caron and John. While they were at the festival, Dhatreyi came running up to Robin, told her that her parents were there, and instructed her to hide in a nearby public restroom. A few minutes later Ksudhi met with Robin and Dhatreyi just outside the restroom. He indicated he would bring the car around and instructed the women to walk quickly from the restroom to the car. This accomplished, they drove back to the San Diego temple where Robin was instructed to pack her belongings. Ksudhi and Dhatreyi then drove Robin to the San Diego airport where Ksudhi purchased a ticket to New Orleans. The ticket was purchased for "Audrey Sherman" – Dhatreyi's Christian name. Ksudhi gave Robin the ticket and Dhatreyi gave her some identification with the name "Audrey Sherman."

Robin boarded the plane at 7 p.m. Sunday evening and after several stopovers, arrived in New Orleans at about dawn on Monday morning. After phoning the New Orleans temple, she was picked up by several devotees and taken to the temple.

Soon thereafter Robin met with the temple president, defendant Nico Kuyt, also known by his Krishna name Nityananda. During the conversation Robin told him she was 15 years old. Nityananda informed her that he had received a letter from her parents, a copy of which was apparently sent by the Georges to each of the Hare Krishna temples in the United States. The letter portrayed Robin as having a mental

condition which required that she be returned home.[3] Robin responded that the contents of the letter were untrue. Nonetheless, Nityananda explained, he had spoken with Jayatirtha – a member of the ISKCON Governing Body Commission (GBC)[4] – and they had agreed she should write her parents to let them know she was all right. Nityananda provided Robin with a sample letter which she modified using her own words. The letter did not disclose Robin's whereabouts. Nityananda told Robin he was going to mail the letter to the president of the San Diego temple with instructions that he mail it to the Georges.

Caron Dempsey and John Herger drove to New Orleans and joined Robin at the New Orleans temple within several days of her arrival there. During the succeeding months, Robin together with the other Krishna devotees performed work and engaged in various religious activities and rituals at the temple. Robin would normally get between four and five hours of sleep each night. Beginning in December 1974, her activities expanded to include "sankirtan," the Krishna reference for the solicitation of donations.[5]

Nityananda controlled virtually every aspect of life at the New Orleans temple. He set work schedules, determined how much sleep each devotee would be allowed, and controlled

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[3] The letter read in part "Although she pretends to be a devotee of the Krishna Consciousness Movement, she is emotionally and mentally unstable and has been undergoing treatments for a mental condition. It was our mistake to keep this a secret at first. At the time she left home, she was passive and nonviolent. However, the picture can change at any time. Her manner is very deceptive. Also she is a vegetarian, and being hypoglycemic, must limit her intake of foods and sweetened foods."

[4] In 1974, Jayatirtha was the GBC member in charge of the western region of the United States. He maintained an office in the Los Angeles temple.

[5] Robin testified that before going out on sankirtan, the devotees would dress in non-Krishna "karmi" clothes. They were instructed to misrepresent their affiliation and purpose in order to obtain donations (e.g., working for UNICEF, an orphanage, a drug rehabilitation center, etc.)

the temple finances. The devotees were not allowed to have any money of their own but were required to seek Nityananda's permission if they needed to purchase anything. At one point Robin developed a staph infection in her foot. She attempted to obtain Nityananda's permission to see a doctor. He refused, telling her the sore simply indicated that Krishna was causing her past bad karma to leave her body. Several days later, Nityananda agreed that Robin could go to a charity hospital.

Nityananda informed the members of the New Orleans temple that Robin's parents were looking for her. He instructed them that they should tell no one Robin was living there. At one point a sign was placed over the telephone reading as follows: "If anyone calls asking for Robin George, tell them she is not here. No one lives here by that name."

Continuing into the early part of 1975, the Georges persisted in their attempts to locate Robin. Marcia George spoke with Rsabadeva at the Laguna Beach temple on two occasions. Rsabadeva told her that it was "quite possible that [Robin] was in the Hare Krishna movement somewhere but he didn't know where." In their second conversation, Marcia again asked Rsabadeva's help in locating Robin. She told him that Jim George "had a weak heart and he was taking it very badly and I was afraid that it would kill him." Rsabadeva laughed and replied, "Well, this has happened to another devotee's father who had a heart attack but didn't die."

After receiving the letter from Robin which was mailed from San Diego, the Georges drove to the San Diego temple and met with the temple president and several other devotees. Between November 1974 and January 1975, the Georges made several additional trips to San Diego. In February 1975 the Georges arranged to meet with GBC member Jayatirtha. He expressed sympathy with their situation and promised to try to help find Robin.

In December 1974 the Georges sent a letter with a picture of Robin to the juvenile divisions of the police departments in all the cities in which Krishna temples were located. In March 1975, the Georges sent a similar letter to the fire departments

in those cities. This second letter included the promise of a $500 reward for information as to Robin's location.

In April 1975, apparently in response to the second letter, police in New Orleans went to the Krishna temple asking for Robin. With the help of another devotee, Robin escaped through a rear window and hid in a nearby apartment used by the Krishnas as a residence. About 20 minutes later after the police had left, Robin returned to the temple and was summoned to Nityananda's office. He told her he had spoken with Jayatirtha and that they had decided she should call her parents, tell them she was fine and ask for permission to stay at the New Orleans temple.

Robin called home and spoke with her mother. When Robin asked for permission to stay at the New Orleans temple, Marcia replied she would have to discuss the issue with Robin's father. Robin then turned the phone over to Nityananda who essentially repeated Robin's request to Marcia. Marcia replied that she didn't think Jim George would permit it. Nityananda told Marcia, "Well, I can't help what she does. If you want her to come home, she'll run away." Marcia responded, "If she runs away, we'll hold you responsible because you're the president of the temple and you have jurisdiction and if she runs away, we'll know its because you helped her to run away."

Later that afternoon, the New Orleans police arrived at the temple, found Robin and took her to the police station. Jim George arrived in New Orleans that night, took custody of Robin and arranged to fly with her the following day to Los Angeles. During the plane ride, Robin began chanting as she had been instructed to do by Nityananda. After Jim warned her to stop several times, he slapped her across the face.

Three Weeks at Home

Upon their arrival at the George home in Cypress, Marcia noticed that Robin had lost a considerable amount of weight. She described her daughter as "stiff" and "expressionless." Within several hours of her arrival home, Robin attempted to

escape through a bedroom window. When her parents discovered the escape attempt, Robin fled to the backyard hysterically chanting and screaming, "Nsringadev."[6] Jim picked up the garden hose and began squirting Robin from a distance of four to five feet. Some of the water got into her mouth. At some point both Jim and Robin slipped on the wet patio slab and fell to the ground.

Following the hosing incident, Jim and Marcia were preoccupied with the fear that Robin would again attempt to escape. For several nights, they took turns sleeping so that one would always be awake watching Robin. The three then discussed the situation and agreed to a procedure where a long chain was attached to Robin's ankle and secured to the base of the toilet, allowing Robin to move freely between the bedroom and bathroom but preventing her escape. After several nights this practice was discontinued.

Within days after arriving home, Robin received a telephone call from Nityananda in New Orleans. He told her, "I will get you out of there as soon as possible, and just keep chanting Hare Krishna." Thereafter, Nityananda told Caron Dempsey to call a friend of hers in the Cypress area named Vivian Grass. Caron arranged for Vivian to pick up some money which Nityananda was wiring from New Orleans.

Spiriting Robin Away to Canada

On May 1, 1975, Robin was supposed to go to a neighbor's house. Instead, she went to Vivian Grass's house. Grass then drove Robin to the Disneyland Hotel where, using the money provided by Nityananda, she purchased an airplane ticket to Miami.[7] Grass then drove Robin to the Laguna Beach

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[6] At trial, Robin explained that Lord Nsringadev was a half-lion/half-man form of Krishna who came down to earth and destroyed the father of a devotee who objected to his being in the Krishna movement.

[7] Grass had told Robin she was supposed to purchase a ticket to Dallas.

temple. When Robin learned that Rsabadeva was not there, she spoke with a devotee named Padmagarbha, explaining her situation and asking to be taken some place other than Laguna Beach.

Padmagarbha drove Robin to the residence of an ex-Krishna devotee in Leucadia.[8] Shortly after her arrival in Leucadia, Robin called Rsabadeva in Laguna Beach. Several days later, Rsabadeva came to Leucadia to visit Robin. He told her he had spoken with Nityananda, who did not want Robin to go to Miami. Instead, he wanted her to fly to Dallas and then on to Canada.

About a week later, Rsabadeva again visited Robin in Leucadia. He told her he had arranged for her to fly to Buffalo, New York the next day. From there she would be taken to Canada. Later that day, Rsabadeva took Robin to a convenience store in Leucadia and bought some make up. He instructed her to wear the make up and disguise herself as a pregnant woman for the flight to Buffalo.

The following day, one of the house residents drove Robin to the San Diego airport and purchased an airline ticket for her under an assumed name to Buffalo via Dallas. Upon her arrival in Buffalo, she was picked up by several devotees who took her to the Buffalo temple where she stayed for approximately one week.

When Robin's parents discovered she had disappeared, they immediately filed a report with the Cypress police. They then proceeded to the Laguna Beach temple and asked to speak with Rsabadeva. When they were told he was not there, they left a message. Rsabadeva called the Georges early the next morning. He told Marcia he had not seen Robin but that if he learned any news of her he would call and let them know. The Georges also spoke with Nityananda in New Orleans. He also denied knowing where Robin was and promised to call if he heard anything.

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[8] Robin described the residents of the house as "fringe members of Hare Krishna."

Shortly after she arrived in Buffalo, Robin called Nityananda, informing him that the president of the Buffalo temple had asked her to stay there rather than going on to Canada. Nityananda replied that he would talk with the temple president and make sure Robin was sent on to Ottawa. Within a week, Robin was driven across the border by several Buffalo devotees who then purchased her a bus ticket and saw to it that she boarded a bus to Ottawa. Upon her arrival in Ottawa, she was met by the Ottawa temple president, Am Su, who took her to the temple.

As was the case with Nityananda in New Orleans, Am Su prescribed Robin's daily routine at the Ottawa temple. One member of the Ottawa temple described Robin as a "sincere" and "hardworking" devotee. Robin also wrote letters to Caron Dempsey – at this point still a member of the New Orleans temple – telling her how much she liked living in Ottawa.

Marcia spoke with GBC-member Jayatirtha in mid-May. He agreed to try to help locate Robin. He also asked Marcia whether she and Jim would agree to allow Robin to live in one of the Southern California temples if he was successful in locating her. The Georges told Jayatirtha they would do so as long as Robin could continue her education. Jayatirtha responded that, "The decision to bring her back ultimately would not be his, but the decision would remain with the president of the temple in which she was located." Jayatirtha then called Am Su and asked him to inquire of Robin whether she thought her parents were sincere. Robin told Am Su she thought there was only a "50/50 chance" that her parents would follow through on the bargain. Thereafter, the Georges had increasing difficulty communicating with the Southern California Krishna leaders. On one occasion, when Marcia was successful in contacting Jayatirtha and Rsabadeva, they accused the Georges of mistreating Robin after she returned home.

Frustrated, the Georges began a public relations campaign against the Krishna movement in Southern California. During the month of June 1975, they and several friends picketed the Krishna temples in Laguna Beach, Los Angeles, and San Diego. They also picketed Rsabadeva's personal

residence. On that occasion, they were confronted by Rsabadeva who threatened to blow up their car if they didn't leave. Another devotee standing only a few feet from Rsabadeva warned the Georges they might never see their daughter alive again if they did not stop picketing.

In July 1975, in response to pressure from the California Attorney General, the Mayor of Cypress, and others, Captain Don Amberg of the Cypress Police Department contacted Jayatirtha about the Robin George situation. Amberg had been told at the Laguna Beach temple that Jayatirtha was "about as high [in the movement, as [he] could go." Jayatirtha told Amberg that he had already cooperated fully with the Georges. Nonetheless, he volunteered to write another letter requesting information about Robin George and send copies to all Krishna temples in the United States. By a cover letter dated July 24, 1975, Jayatirtha forwarded a copy of the letter to Amberg.[9] The cover letter stated in part, "I hope that you can see by this that we are indeed attempting to help out the George's [*sic*] as much as is within our power. Beyond a temple-by-temple search, which is unfeasable, [*sic*] I don't know what else we can do to facilitate your work."

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[9] The letter stated: "As you will remember, on June 1, I sent out a letter to all temple presidents in regards to one Robin George (spiritual name Rajanath devi dasi). In that letter I requested that if any of you had seen her or if she was living in any of your temples that you should contact me and she should contact her parents. However, I have received no response upto this date. Now recently, the George's have stepped up their anti-Iskcon publicity campaign, and have gone to the extent of contacting the attorney general of the State of California to try to press criminal charges against soem of us. Of course they have no grounds for pressing such charges but at the same time it is a fact that we are working very hard against all odds to try to establish ourselves as a responsible institution so such publicity is not at all good. Please, therefore, be sure to inform me if you have seen this girl. Now, if she is in your temple and is afraid to contact her parents, have her contact me directly and I will try to work something out as an inter-media." (Grammar and spelling as in the original.)

The "Con"

In August 1975, the Krishnas responded to the pressure being created by the Georges. Nityananda drafted two letters and sent them to Am Su with instructions that Robin copy them, making whatever changes were necessary to put the thoughts in her own words. The first letter was addressed to Robin's parents. In it, she explained she was no longer a member of the Krishna movement. Instead, she was traveling with a group of musicians in Mexico and enjoying her independence. She repeatedly chided her parents for mistreating her when she was home.[10]

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[10] Robin's letter read as follows: "Dear Mom and Dad, Please be informed that I'm alright, healthy (I've gained some weight,) and happy. I heard you're worried and think I'm living at a temple so I'm writing this to staighten things out.

"Actually what happened is that after staying with you a few weeks I could clearly see that everything the devottees said wasn't 100 percent true and that there were some contradictions in their philosophy and actions. Although they're really nice people and I still love them, I wouldn't ever want to live with them again. Living at their temple however was a good experience in growing up because it gave me a taste for independence. I think because of it I'm a more aware and mature individual and because of that I could never again live with you either. (Especially after the way you treated me like a dog when I was just coming down from that heavy experience. What I really needed was comfort and love. It's quite a shock you know to be thrown from one atmosphere into another overnight.) Because of your own lack of understanding and my newly acquired taste for independence, I had to leave you again. I'm sorry if it hurts you but you've hurt me many times over in the cruel, inhuman way you treated me. Even if you thought my mind was disturbed, that's *no* way to treat anything. (I have more compassion for a blade of grass then that.) I know you thought it would help me, but look where it got you – I'm not living with you now.

"Anyway, I've met some far-out people who are also searching for the truth. They're muscians and I'm learning a lot from them. We're traveling around quite a bit so please don't try and find me. It's so nice – we're all truth-seekers, peace lovers, and nature freaks. I'm sending you a picture so you can see I'm alright.

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The second letter was addressed to Caron Dempsey, John Herger and Nityananda at the New Orleans temple. In that letter, Robin also stated she was traveling in Mexico and complained about mistreatment by her parents. She mentioned she had heard about her parents' public relations campaign against the Krishnas and hoped her letter to them "straightens things out."

Robin addressed envelopes as well. The first letter was placed in an envelope without explanation addressed to Caron Dempsey's family. Am Su explained to Robin that Nityananda thought this was necessary because if the letter were sent directly to Robin's parents, they would simply ignore it and tell no one about it. Am Su sent the letters and envelopes without postage to Nityananda in New Orleans who forwarded them to the Mexico City temple where they were

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"There's so much beauty in this world, and we live such a short life, so just try to enjoy it. I'm *very* bitter about how you've treated me and can't say I ever want to see you again. Please just mellow out – that's what I'm doing and it's the only way to live. Life's got so many wonderful experiences and things to learn, and their all just around the cornor. I know you want me to be there to share them with you but I've grown up.

"Don't hassle the Hare Krishna devottees and don't hassle anyone. Just try to feel compassionate and peaceful within your self.

"Please understand I'm making my own decisions now and it's very nice, this freedom. I can go where I want, do what I want, and be what I want. I'll admit I may have been wrong in my ideas, and now they're changed, so I'm asking let's forget the whole thing ever happened. I wanted to be independent and run away since I was 13 and the devottees were a good excuse, especially since Caron and John were into it. So just except my independence. I have my own job, buy my own food, etc. It's far out. Basically I'm saying, just don't blame anyone or anything I used to gain my independence with. Especially the devottees. Basically they're truth-seekers too but in a different way.

"I've changed and you must change, so just try and be good to others. (That's what Jesus taught.)

"Love, your crazy daughter, Robin." (Grammar and spelling as in the original.)

stamped, postmarked, and mailed to their respective destinations. Before forwarding the material to Mexico City, Nityananda showed Caron Dempsey the first letter and the photograph, explaining, "This is the con we have, we are going to send it to Mexico."[11]

When Nityananda received the second letter back from Mexico City, he forwarded it to Jayatirtha in Los Angeles along with a cover letter which read: "I received this letter yesterday from Rajanath [Robin's Krishna name]. I suppose it will make her parents happy to know that she is not in one of our temples. The fact that she signs her name Robin, is not a very good sign. Anyway, your letters requested that any information be sent as soon as it was received, so I hope that this will help out with your problem there. This girl was a really nice devotee when she was here and it is a real shame that she had such a strange family." Jayatirtha, in turn, sent Robin's letter with Nityananda's commentary to the Cypress police.

The Georges received Robin's letter from the Dempseys. Based on a variety of factors, the Georges concluded that both the letter and the photograph were part of a scam. They continued to believe that Robin was being hidden from them somewhere in the Krishna movement.

The Beginning of the End

In the late summer of 1975, Caron Dempsey left the New Orleans temple and returned to Southern California. After living in the Los Angeles temple for a short while she returned home in September to live with her mother. In mid-October, Caron contacted the Georges and told Marcia that Robin was in Ottawa. After relaying this information to the Cypress police, Jim decided to drive to Ottawa.

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[11] At trial Robin testified she gave little thought to the effect the letter would have on her parents. She stated that at that point, she simply viewed them as "karmi meat eating demons."

Accompanied by Canadian authorities, Jim arrived at the Ottawa temple on October 28, 1975. Alerted by another devotee, Am Su instructed Robin to disguise herself using a wig and glasses which had been purchased with just such an eventuality in mind. Robin was able to leave through a back door and proceed to a nearby residential apartment where she met Am Su's wife, Jagadikanda. Jagadikanda gave Robin some non-Krishna "karmi" clothes and instructed her to go to downtown Ottawa and wait in a department store for an hour before calling.

An hour later Robin phoned the temple and spoke with Am Su. He picked her up a few minutes later and they drove for several hours to an isolated farm which was being rented by an independent devotee named Hanuman. The house was vacant at the time because Hanuman's wife had just had a baby and was staying in a hospital in a nearby town. After making arrangements with Hanuman to get into the house, Am Su bought some groceries for Robin, left her there, and returned to Ottawa. Hanuman returned to the farm within several days.[12]

Meanwhile, back in California, Captain Amberg of the Cypress police had interviewed Caron Dempsey. On Friday, October 31, Amberg phoned Jayatirtha at the Los Angeles temple. In somewhat colorful language,[13] he told Jayatirtha that the statement from Caron Dempsey indicated that the Krishnas had been lying with respect to their knowledge of Robin's whereabouts. He threatened a criminal prosecution and gave Jayatirtha 24 hours to produce Robin. Within minutes, Amberg received a phone call from an attorney representing the Krishnas. He asked if he could have until Monday

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[12] Hanuman testified he returned to the farm the day after Robin arrived.

[13] Amberg testified that he told Jayatirtha, "Hello, Mr. Bastard, I have just about got you by the balls. I now have a witness that's willing to testify." Later in the conversation, when Jayatirtha protested that he had relied on Nityananda, Amberg replied, "You can tell that lying SOB that he will be the next one I will be after."

morning to look into the matter. Amberg agreed on the condition that he receive a phone call from the lawyer before 9 a.m.

Am Su returned to Hanuman's farm on the evening of October 31. He told Robin, "Your father says he has a letter that can put all of us in jail, all the devotees in jail, or could put me in jail and Jayatirtha in jail and Nityananda in jail. What letter is he talking about?" Robin replied that the only letter she could think of was one she had written to Caron Dempsey, explaining how she had gotten from Los Angeles to Ottawa. Am Su then explained to Robin that Caron had left the Krishna movement. He also told her that Jayatirtha "wants you out in L.A. immediately." Am Su then drove Robin to Detroit where he purchased her a plane ticket to Los Angeles. Robin flew to Los Angeles on November 2. She was met by several Krishna devotees and taken to the Los Angeles temple.

On Monday November 3, Robin was summoned to Jayatirtha's office. She told him about the letter she had written to Caron. Jayatirtha told Robin that she had to retrieve the letter because otherwise, he and some of the other devotees "might have to go to jail." The next day, Robin went with Jayatirtha and two other devotees to meet with the ISKCON lawyer. They discussed Robin's letter to Caron. The lawyer stated that the devotees were "in very serious trouble" and told Robin she had to retrieve the letter because "its very damaging." During the meeting, the lawyer placed a phone call to Captain Amberg. He stated that although the Krishnas did not know where Robin was, he wanted to know whether criminal charges would be pressed if Robin appeared within a few days. Amberg replied that he viewed such an inquiry as unprofessional. Amberg also said he would not be surprised if Robin was sitting in the lawyer's office that very moment. According to Robin, the lawyer turned white, his jaw dropped, he said good-bye and hung up the phone.

As the meeting continued, the lawyer gave Robin some psychological tests to take. He wanted her to see a psychiatrist to demonstrate that she had joined the Krishna movement of her own volition. He also indicated he would arrange for her to turn herself in to the Cypress police the following day.

He instructed her to tell the police: (1) she told all the devotees she was 18 years old and they believed her; (2) official Krishna money had not been used on her; (3) her parents had been cruel to her; and (4) she wanted to be placed in a foster home.

The next morning Robin decided to run away from the temple. As she described it, "I felt that demons that I knew were better than demons that I didn't know, and I didn't feel safe or trust [the ISKCON lawyer]. I wanted to live in a temple, and I was just very confused." After running from the temple, she caught a bus and rode it to the end of the line. From there she hitchhiked to Vivian Grass's house where she telephoned Caron Dempsey. Caron arrived a short time later and they talked all night. The next morning Robin walked home.

Shortly after she got home, Captain Amberg and other members of the Cypress police department arrived at the George Residence to interview Robin. As she had been instructed, Robin lied to the police in order to protect the Krishnas. After giving the police a tape-recorded statement, Robin was taken to juvenile hall. Three weeks later, she was released to her parents.

The Aftermath

Less than four months later on March 5, 1976, Jim George suffered a heart attack. Thereafter, he suffered several strokes which required extensive hospitalization. On September 4, 1976, Jim George died. An expert testified at trial that although Jim had been diagnosed as having heart disease as early as May 1974, the stress occasioned by his interaction with the Krishnas and his inability to locate Robin significantly shortened his life.

After Robin's return home, Marcia and Robin became active in an "anti-cult" organization known as the Citizens Freedom Foundation (CFF). In October 1976, the Krishnas became aware that Robin was going to speak at a CFF press conference concerning the Krishna movement. In preparation

for the press conference, Makunda, the "community affairs director" for the Los Angeles temple prepared a press release entitled the "Official Position Regarding Robin George."[14]

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[14] The release stated the following: "Robin George became interested in our movement in Laguna Beach. Apparently, her parents disapproved of the idea. On several occasions, Robin came to our temple and complained of being beaten by them. Once she told us that they had chained or teid her to her bed, and that they had forced a piece of hose down her throat to stop her chanting and singing. However accurate these accounts may have been, she relayed them to at least twenty-five people at the Laguna Beach center. As a result, they gave her shelter. Privately (without using official funds), they helped her arrange her journey to the New Orleans center. In other words, Robin insisted on running away from home and on joining the movement.

"[T]he problems of her being a minor was not considered at that time. We didn't know her family's reaction against our movement was going to be so strong. After Robin arrived in New Orleans, her family got her back, then she ran away again. There's a history of this girl running away from her family because of what she told us to be cruelty, beatings, harsh treatment. Robin also went to Canada. This was all being arranged privately. Temple funds, ISKCON funds, were not involved. ISKCON's leaders were never involved or consulted about what was going on. During all this time, Robin's parents were persistently investigating and demanding her return.

"Eventually they inquired from our coordinator in Los Angeles, and the police, did likewise. We cooperated by mailing letters to all our American centers, along with photographs of the girl – we can document that – and these letters and photographs were posted on bulletin boards in all those centers. Finally, we learned that this girl had turned up in our center in Ottowa, Canada. Although she was reportedly reluctant to return home, an attorney advised us that she had no choice.

"The matter was very delicate, because the parents had gotten proof that she was taking shelter in our New Orleans and Ottawa centers. As a result, they were planning to press charges against the International Society for Krishna Consciousness. So, to ease the burden of giving her over to her parents, for the first time the ISKCON leadership got involved and brought Robin from Ottawa to Los Angeles. The only purpose for bringing her to Los Angeles was to give her over to her family. But upon

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Among other things, the "Official Position" stated that Robin complained of being beaten by her parents. It suggested she was motivated initially to seek shelter at the Laguna Beach temple and later flee to New Orleans because of parental abuse. The "Official Position" was distributed to member of the media who attended the press conference.

The Lawsuit

In October 1977, Robin and Marcia filed suit against four Krishna corporate entities (ISKCON of California, New York, Louisiana and Canada) and two individuals (Rsabadeva and Nityananda). The case went to trial on theories of false imprisonment (as to Robin), intentional infliction of emotional distress (Robin and Marcia), libel (Robin and Marcia) and wrongful death (Robin). The jury returned a verdict in favor of the Georges on all causes of action, awarding damages as follows:

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her arrival in Los Angeles, what we feared actually happened – she ran away. She'd been telling us all along that her parents treated her terribly and that she was going to run away, and that's precisely what she did.

"Yet, amazingly, she went to the parents. For all we know now, her accounts of brutality and beating were exaggerated or totally fabricated. The thing is that now, when asked her reason for turning against the Krishna consciousness society, she says, ' . . . because they wanted to send me home.' In her statements to a Laguna Beach newspaper she says that our members were forcing her to return home.

"So the charges of her family were that we were involved in an international conspiracy is absurd. At no time before the girl was discovered in our Ottawa temple did the leadership of our religion know that she was actually in one or our temples. As soon as we found out, we made arrangements to bring the girl home to her family, and it is that very fact that turned her against us. How can her parents dare claim that we were involved in a conspiracy to keep this girl away from them?" (Grammar and spelling as in the original.)

False Imprisonment (Robin)	
Compensatory	$1.5 million
Punitive	$15 million
Intentional Infliction	
Compensatory (Robin)	$250,000
Compensatory (Marcia)	$1.5 million
Punitive (joint)	$12.25 million
Libel	
Compensatory (Robin)	$2,500
Compensatory (Marcia)	$10,000 .
Punitive (join)	$2 million
Wrongful Death (Robin)	
Compensatory only	$75,000

Following the trial court's conditional granting of defendants' motion for new trial, the Georges accepted a remittitur reducing the compensatory award to Marcia on the emotional distress claim to $400,000 and the punitive awards for false imprisonment to $5 million, for emotional distress to $2 million and for libel to $500,000.

DISCUSSION

I

FALSE IMPRISONMENT

The centerpiece of this case both in terms of the evidentiary presentation at trial[15] and the amount of damages awarded

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[15] In argument to the jury, plaintiff's counsel stated as follows: "[T]he whole nut of this case revolves around this false imprisonment charge. . . .Once you analyze that evidence, then other things either fall into place or they don't fall into place." Later, counsel pursued this same theme in more detail: "Now, I suggest to you, ladies and gentlemen, that the plaintiffs have proven a false imprisonment as to Robin George. I submit that what you ought to do when you deliberate is you ought to decide this issue first. You can approach this in any way you want, but it seems to me if there was no false imprisonment that the rest of this stuff is a lot of hogwash, because that means that Robin decided to run away

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was Robin George's claim that she had been falsely imprisoned by defendants during the approximately one year she was a member of the Krishna faith.

Penal Code section 236 defines the crime of false imprisonment as "the unlawful violation of the personal liberty of another." The criminal definition has been held applicable to the tort of false imprisonment as well. (*Parrott v. Bank of America* (1950) 97 Cal.App.2d 14, 22; *City of Newport Beach v. Sasse* (1970) 9 Cal.App.3d 803, 810.) "The tort requires *direct restraint* of the person for some appreciable length of time, however short, compelling him to stay or go somewhere against his will." (5 Witkin, Summary of Cal. Law (8th ed. 1988) Torts, § 378, p. 463, italics in original.) With one apparent exception,[16] the "violation of personal liberty" which the tort of false imprisonment contemplates necessarily involves a physical restraint of the plaintiff. This is not to say, however, that the plaintiff must in fact be physically restrained; the *threat* of physical restraint may be sufficient. (*People v. Haney* (1977) 75 Cal.App.3d 308, 313; *Parrott v. Bank of America, supra*, 97 Cal.App.2d 14, 22-23.)

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from home and torment her parents and it's all her fault anyway. It just wouldn't be fair to find against the defendants in [those] circumstances."

While it might be tempting to treat counsel's comments as tantamount to a concession, we do not believe a lawyer's argument to a jury can or ought to foreclose an appellate court from fairly evaluating the legal merits of a case. In other words, counsel's statement to that effect is an insufficient basis for us to conclude that all aspects of this case stand or fall with the false imprisonment count. Accordingly, we will review each cause of action separately.

[16] Penal Code section 237 recognizes that false imprisonment may be accomplished by means of fraud or deceit. (See *People v. Rios* (1986) 177 Cal.App.3d 445; see also *People v. Henderson* (1977) 19 Cal.3d 86, 94.) The evidence does not suggest that Robin was confined in any of the Krishna temples by fraud, nor was such a theory ever argued by plaintiff's at trial.

At trial, even the Georges recognized this was not a prototypical case of false imprisonment. Robin admitted she was never physically restrained by the defendants and that her residence in the various Krishna temples was not against her will.[17] To counter these facts, plaintiffs introduced expert

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[17] Robin testified as follows:

"Q. While you were in New Orleans were you restrained against your will in that temple?

"A. Restrained in what way?

"Q. Confined?

"A. I mean, are you saying physically?

"Q. Physically?

"A. Physically, no.

"Q. I take it the same is true of Laguna Beach, and the same is true of Ottawa, is that correct?

"A. Yes.

"Q. When your father brought you home to Los Angeles or Cypress, that was against your will wasn't it?

"A. What do you mean?

"Q. You didn't want to go, did you?

"A. No, I didn't.

"Q. So your will was to stay in New Orleans, wasn't it?

"A. To stay a Hare Krishna devotee.

"Q. In a Hare Krishna temple?

"A. Yes.

"Q. Not to go home?

"A. Yes.

"Q. So wasn't it against your will that you went home?

"A. Yes, I suppose."

"Q. Were you restrained or confined or detained in Canada against your will? And I am talking about physical restraint, confinement or detention?

"A. No.

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testimony from Drs. Margaret Singer and Sydney Smith to the effect that defendants "brainwashed" Robin into joining the Krishna movement. In particular, Dr. Singer testified Robin's "will had been overborne" by late October 1974 such that her decision to run away from home on November 16 was not a product of her own free will. Both Dr. Singer and Dr. Smith identified several features of the Krishna faith which, they argued, contributed to rendering Robin incapable of exercising freedom of choice including a low carbohydrate vegetarian diet, reduced amount of sleep and chanting as a means of religious ritual.

Defendants fervently assert that the evidence at trial, even when viewed in a light most favorable to the plaintiffs' claims, is simply insufficient to support liability on a false imprisonment theory. They argue that false imprisonment requires at a minimum direct physical restraint of the plaintiff by force or threat of force, neither of which was present in this case.

Robin responds with what we perceive to be three different arguments in support of the jury's false imprisonment verdict. First, relying on a single 1951 case, she asserts defendants can be liable for false imprisonment because they created "substantial obstacles" to her freedom of movement.

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"Q. No one ever forced or threatened you with force while you were in Canada, isn't that correct?

"A. That's correct.

"Q. At any time from the time you first encountered Mr. Roy Richard until the last time you saw him at the Los Angeles temple, did Mr. Roy Richard ever forcibly restrain you?

"A. No.

"Q. [A]t no time when you were in New Orleans or when you were at a farm in Mississippi, or when you went to Dallas and came back, were you ever forcibly restrained by the defendant Nico Kuyt, isn't that true?

"A. I was never, no."

Next, Robin contends false imprisonment is established as a matter of law whenever a defendant entices or permits a minor to remain out of the custody of her parents. Finally, based on the expert testimony from Drs. Singer and Smith, Robin argues that evidence of physical restraint is unnecessary if it can be shown that defendants brainwashed her into remaining a member of the Krishna movement.

False Imprisonment Based on the Creation of Obstacles to Movement

Relying on *Schanafelt v. Seaboard Finance Co.* (1951) 108 Cal.App.2d 420, Robin asserts the evidence is sufficient to support a finding of liability on a false imprisonment theory because the defendants created substantial obstacles to her liberty and freedom of movement be taking her far from home, depriving her of financial resources and limiting her access to means of communication and transportation. She suggests *Schanafelt* stands for the proposition that physical force or the threat of it is not a necessary element of a false imprisonment cause of action.

In *Schanafelt*, the defendant's agent Alexander was attempting to repossess some of plaintiff's furniture. Apparently to facilitate his task, he parked in plaintiff's driveway so as to block her car from exiting and ordered her to remain until a truck arrived. He gruffly refused her request to leave and later denied her permission to leave to get some food. The court concluded the jury's verdict in favor of the plaintiff was supported by the evidence:

"The house was at the time unoccupied. . . .[Plaintiff's] only means of transportation was by automobile and Alexander had parked his car across the driveway for the obvious purpose of blocking exit. Plaintiff concluded from Alexander's attitude that he would not move the car if requested to do so. Plaintiff was pregnant at the time and especially fearful because of her condition, which was known to Alexander. Alexander's conduct, in the light of his motives, was clearly sufficient to support a finding of false imprisonment. Words or conduct furnishing a reasonable apprehension on the part of the one

restrained that he will not be allowed to depart is sufficient." (*Id.* at p. 423.).

We think Robin reads *Schanafelt* far too broadly when she suggests that the creation of any "substantial obstacle" to movement is sufficient to support a judgment for false imprisonment. To begin with, the facts of *Schanafelt* are clearly distinguishable because here, there was no evidence of "words or conduct" on the part of the defendants indicating to Robin she was not free to leave. Moreover, in support of its legal conclusion quoted above, the *Schanafelt* opinion cites *Vandiveer v. Charters* (1930) 110 Cal.App. 347 in which the court expressed its conclusion that "[i]t was a question of fact for the trial court to determine whether the words 'or conduct', [of defendants] were such as to induce the plaintiff, as a reasonable person, to apprehend the use of *force* and *coercion*, if she declined to act in accordance with their demands." (*Id.* at p. 356, italics added.) Thus, far from eliminating the force requirements, *Schanafelt* merely represents an application of the general rule that an implied threat of force, reasonably believed by the plaintiff, is sufficient to support a finding of false imprisonment. There being no threat of force of any kind in this case, *Schanafelt* is simply inapplicable.

False Imprisonment Based on Robin's Status as a Minor

Perhaps based in part on a recognition of the difficulties in defining "brainwashing" and differentiating it from constitutionally protected proselytization (see *Katz v. Superior Court* (1977) 73 Cal.App.3d 952, 987-988, Robin attempts to deflect First Amendment concerns by focussing on her status as a minor. She argues that "[I]f someone entices, or permits, or forces a child to stay anywhere except in the custody of her parents, without the parents' consent (express or implied), that person had falsely imprisoned the child." As we explain in more detail in section III of this opinion, we have no difficulty with the sufficiency of the evidence to support the premise of Robin's argument; that is, that the defendants enticed and encouraged her to run away from home and

thereafter conspired to hide her from her parents at various locations in the United States and Canada. What remains is a legal question: Do such acts constitute false imprisonment? On the facts of this case, we conclude they do not.

Robin places considerable reliance on *Parnell v. Superior Court* (1981) 119 Cal.App.3d 392, in which the defendant abducted a seven-year-old boy, Steven, after falsely promising to give him a ride home. Although concluding the evidence was sufficient to warrant kidnapping charges against the defendant, which necessarily included a "forcible taking" element,[18] the court suggested in a footnote that the kidnapping of a minor – and presumably a false imprisonment – could be accomplished "even if unaccompanied by force so long as it was done for an improper purpose, because a minor 'is too young to give his legal consent to being taken. . . .' "[19] (*Id.* at pp. 402-403, fn. 3, quoting *People v. Oliver* (1961) 55 Cal.2d 761, 764-765.) *Oliver* involved a defendant charged with kidnapping a two-year-old infant and thereafter committing a lewd and lascivious act. The Supreme Court there held that where a defendant is charged with kidnapping a child "too young to give . . . legal consent to being taken," it is both necessary and sufficient to show that the child was taken "for an illegal purpose or with an illegal intent." (55 Cal.2d at pp. 764, 768.)

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[18] During the initial drive, Parnell refused Steven's requests to contact his parents. Thereafter, he told Steven that he had obtained legal custody. Parnell gave the boy a new name and threatened to spank him if he revealed his true identity. On occasions when he had to leave, Parnell gave Steven sleeping pills so he would sleep until Parnell returned (*Id.* at p. 398.)

[19] As a general proposition, conduct which would otherwise be tortious is not actionable if the plaintiff consents to it. "Consent ordinarily bars recovery for intentional interferences with person or property. It is not, strictly speaking, a privilege, or even a defense, but goes to negative the existence of any tort in the first instance." (Prosser & Keeton, Torts (5th ed. 1984) § 18, p. 112; see also Civ. Code, § 3515 ("He who consents to an act is not wronged by it.").)

Putting aside the difficulties in determining whether Robin was secreted by defendants "for an illegal purpose or with an illegal intent," *Oliver* itself refutes the notion that every minor – i.e., every person under the age of 18 – is too young to give legal consent and thus by definition is falsely imprisoned when he or she is kept from parental custody. In support of the proposition that the infant was too young to consent, the court cited three out-of-state cases involving children of ages two weeks (*State v. Hoyle* (Wash. 1921) 194 P. 976, 977), eleven years (*John v. State* (Wyo. 1896) 44 P. 51, 53) and four years (*State v. Farrar* (1860) 41 N.H. 53, 59). It then contrasted those citations with a California case, *People v. Williams* (1936) 12 Cal.App.2d 207, 212, in which the court held that a 12-year-old boy was capable of consenting to the defendant's commission of a lewd act.

That there can be no hard-and-fast rule as to the age at which a minor attains the capacity to consent has been noted by at least one respected set of commentators. "A minor acquires capacity to consent to different kinds of invasions and conduct at different stages in his development. Capacity exists when the minor has the ability of the average person to understand and weigh the risks and benefits." (Prosser & Keeton, Torts (5th ed. 1984) § 18, p. 115.) Moreover, case and statutory law is replete with examples of situations in which a child over the age of 14 is deemed to have the mental capacity of an adult. In California, minors of that age are capable of committing and being held responsible for a crime (Pen. Code, § 26), obtaining an abortion or birth control devices (Civ. Code, § 34.5), consenting to certain types of medical and mental health treatment (Civ. Code, §§ 25.9, 34.7 et seq.) and being emancipated (Civ. Code., § 64).

Particularly significant in this regard is the United States Supreme Court decision in *Chatwin v. United States* (1946) 326 U.S. 455 which overturned a defendant's conviction on federal kidnapping charges. The case is noteworthy not only because it involves the capacity of a girl of approximately Robin's age to consent to a kidnapping, but also because the

defendant was a member of a minority religious sect. Chatwin was a 68-year-old fundamentalist Mormon who converted the 15-year-old victim, whom he employed as a housekeeper, to believing in the doctrine of "celestial" or plural marriage. They fled to Mexico where a wedding ceremony was performed and lived thereafter in Arizona.[20] (*Id.* at pp. 457-458.) The Supreme Court held that the girl's consent to the transportation and marriage barred the kidnapping charges: "[T]here is no competent or substantial proof that the girl was of such an age or mentality as necessarily to preclude her from understanding the doctrine of celestial marriage and from exercising her own free will, thereby making the will of her parents . . . the important factor. At the time of the alleged inveiglement in August, 1941, she was 15 years and 8 months of age and the alleged holding occurred thereafter. There is no legal warrant for concluding that such an age is ipso facto proof of mental incapacity in view of the general rule that incapacity is to be presumed only where a child is under the age of 14." (*Id.* at p. 461.) In language particularly appropriate to this case, the court added that "the broadness of the statutory language [in the Federal Kidnapping Act] does not permit us to tear the words out of their context, using the magic of lexigraphy to apply them to *unattractive or immoral situations lacking the involuntariness of seizure and detention which is the very essence of the crime* of kidnapping." (*Id.* at p. 464, italics added.)

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[20] Interestingly, the stipulated facts in the case provided that the girl had a "mental age" of seven years and two months at the time Chatwin first began discussing with her the concept of celestial marriage. (*Id.* at p. 457.) The court rejected the government's contention that this fact was sufficient to establish her inability to consent: "[T]he method of testing the girl's mental age is not revealed and there is a complete absence of proof in the record as to the proper weight and significance to be attached to this particular mental age. . . .Under such circumstances a stipulated mental age of 7 cannot be said necessarily to preclude one from understanding and judging the principles of celestial marriage and from acting in accordance with one's beliefs in the matter." (*Id.* at p. 462.)

Here, Robin was 15 at the time she decided to run away from home. The evidence introduced by the plaintiff's demonstrates that she was a bright and gifted high school student of above-average intelligence and maturity. No doubt her decisions in these matters were in part the product of the "rebelliousness of youth" but that is hardly a trait which evaporates at age 18. We seriously question whether a minor who by statutory definition is capable of committing a crime can at the same time be incapable of consenting to what would otherwise be a tort. At a minimum, however, the common law and case precedent indicate that a minor over the age of 14 is presumed to be capable of consenting to conduct which would otherwise be tortious. The evidence here, far from establishing incapacity, demonstrates quite the opposite.

We think an analogy to the criminal law may be helpful in evaluating the competing interests at stake here. As we have seen, a minor's consent may prevent a defendant's conviction for kidnapping just as it precludes civil tort liability for false imprisonment. California has for some time, however, had a child abduction statute, Penal Code section 278, which prohibits any person from intentionally detaining, concealing or enticing away any minor from his or her parent or guardian. It has been repeatedly held that this statute defines a crime against the parent or guardian and for that reason, the minor's consent is irrelevant. (See. e.g., *People v. Moore* (1945) 67 Cal.App.2d 789, 792; *People v. Gillispie* (1930) 104 Cal.App. 765, 767.)[21] Similarly here, as we explain in section III, *post*, the defendants' principal conduct in concealing Robin from her parents constituted a tragic civil

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[21] Cases such as *People v. Rios* (1986) 177 Cal.App.3d 445 (13-month-old victim) and *People v. Campos* (1982) 131 Cal.App.3d 894 (11-month-old victim) do not suggest a contrary result in holding that a defendant may be convicted of both kidnapping or false imprisonment *and* child stealing. (*Rios, supra*, 177 Cal.App.3d at p. 450; *Campos, supra*, 131 Cal.App.3d at p. 899.) Unlike *Moore* and *Gillispie*, *Rios* and *Campos* concerned minors with no capacity to consent.

wrong against Jim and Marcia George; it was not a tort against Robin.

False Imprisonment Based on a "Brainwashing" Theory

Finally, Robin argues that the "force or threat of force" and "lack of consent" requirements for the tort of false imprisonment may be satisfied by a showing that the plaintiff was subjected to coercive persuasion. She asserts it makes no functional difference whether her will was overcome by force or threats of force or by systematic brainwashing techniques. In either event, she suggests, the tort was committed because she effectively was confined against her will.

The California Supreme Court recently had occasion to consider the subject of "coercive persuasion" in the context of claims by former members of the Unification Church that they had been brainwashed into joining the Church. In *Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, the court held that plaintiffs had stated a cause of action against the Church for fraud and intentional infliction of emotional distress based on allegations that the Church misrepresented its identity and deceived them into attending an indoctrination meeting and retreat. At the same time, however, the court rejected one plaintiff's assertion that she had been falsely imprisoned at the retreat, noting she admitted she was "theoretically free to depart at any time" and "was not physically restrained, subjected to threats of physical force, or subjectively afraid of physical force." (*Id.* at p. 1123.) The plaintiff argued she had in fact been threatened because the Church asserted she and her family would be "damned to Hell forever" if she left. The Supreme Court quickly dispatched this argument, concluding that it sought "to make the Church liable for threatening divine retribution. . . . [S]uch threats are protected religious speech [citations] and cannot provide the basis for tort liability." (*Id.* at pp. 1123-1124.)

Robin seeks to distinguish *Molko* on the ground that the plaintiff's claim there was based solely on "protected

religious speech." In contrast, she asserts, her brainwashing claim involved more than simple threats of divine retribution.

We decline Robin's invitation to extend what we believe are the clear limits of *Molko*. To begin with, we read *Molko* as a reaffirmation that physical force or the threat of it is a necessary element of a false imprisonment cause of action even in the context of a brainwashing claim. The plaintiff's divine retribution argument was a last-ditch attempt to satisfy the threat requirement. We have great difficulty believing the Supreme Court simply ignored plaintiff's "coercive persuasion" allegations as a possible basis for the force element.

Robin is, of course, correct that the brainwashing theory expounded by Drs. Singer and Smith focused on more than threats of divine retribution. The results, however, are the same. Tort liability based on dietary restrictions, methods of worship, and communal living arrangements and schedules is just as surely inimical to the free exercise of religious liberty as that based on threats of divine retribution.[22] This is made clear in another portion of the *Molko* opinion which defends against a First Amendment argument the court's conclusion that religious *fraud* is actionable: "Although fasting, poverty, silence or cloistered living may constitute intensive religious practice, we have already determined that fraud, even though purported to be religiously motivated, is actionable conduct. . . ." (46 Cal.3d at p. 1122.)

Here, Robin presented no evidence of fraud as to her[23] nor did the evidence at trial so much as suggest that the

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[22] A different question might be presented if it could be shown that a religious group adopted certain devotional practices *for the purpose* of brainwashing potential converts. No such evidence was presented in the case and we decline to express any opinion on the matter.

[23] For the first time in her petition for rehearing, Robin asserts she was fraudulently induced to join the Krishna movement based on representations by Rsabadeva that she could not practice the religion at home. At trial, Rsabadeva denied that living in a temple constituted a tenet of the Krishna religion.

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schedules, practices and duties required of her differed from those of any other Krishna devotee. Absent such evidence, Robin's brainwashing theory of false imprisonment is no more than an attempt to premise tort liability on religious practices the Georges find objectionable. Such a result is simply inconsistent with the First Amendment.

II

Intentional Infliction of Emotional Distress as to Robin

For reasons similar to those expressed in the preceding two subsections, we conclude that Robin's claim for damages based on the intentional infliction of emotional distress is also fatally flawed. Many of the acts relied on by Robin as "outrageous" are hardly uncommon among cloistered religious groups.[24] Moreover, there is a dearth of evidence suggesting

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We have reviewed the portions of the record cited to us and other contextual testimony. To begin with, Robin never testified that absent these presentations she would not have left home. Moreover, Rsabadeva did testify that in order to practice Krishna consciousness at home, a devotee was required perform certain rituals such as worshipping at an altar and chanting. Robin, of course, was prohibited by her parents from engaging in such practices at home. (See *ante*, p. 745.) Thus assuming Rsabadeva made such representations to Robin, they are most reasonably interpreted not as a statement of Krishna theologic doctrine but rather as his opinion regarding Robin's ability to *successfully* practice the religion at *her* home.

[24] The Georges argue the intentional infliction issue as follows: "The jury's conclusion is supported by ample evidence of defendants' misconduct toward Robin. The record is replete with accounts of Robin's arduous life with defendants:

– "Robin was made to work grueling hours with very little in the way of sleep or sustenance.

– "All of her possessions were taken away; she was forced to plead for such common items as shoes, clothing and health care.

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that any of these acts were performed by defendants with the intention of inflicting emotional distress on Robin or even in reckless disregard of that possibility. (See *Agarwal v. Johnson* (1979) 25 Cal.3d 932, 946-947.) As we have previously noted, Robin's religious duties and living conditions were identical to all the other Krishna devotees who voluntarily chose the Krishna lifestyle.

Although the Supreme Court's decision in *Molko* held the plaintiff's there had stated a cause of action for intentional infliction of emotional distress, it does not support the verdict in this case. The *Molko* opinion begins its discussion of the emotional distress issue by defining the plaintiffs' claim: "Molko and Leal essentially contend the same conduct that supports their fraud actions – i.e., misrepresentation and concealment of the Church's identity for the purpose of inducing them to submit unknowingly to coercive persuasion – also

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– "She was required to do menial labor and forced to beg for money.

– "Robin was deprived of any meaningful contact with the outside world. She was separated from the nurturing influence of family and friends; she was not even allowed to correspond.

– "Robin was deprived of the simple joys of life. She was not permitted to read books or newspapers, view television or even listen to the radio.

– "Most important, Robin was moved from place-to-place without regard to her personal wishes. Quite apart from the tortious purpose of these movements, defendants forced Robin to travel to Louisiana, Mississippi, New York, Canada, Michigan and Los Angeles without so much as asking her permission."

It should be noted that plaintiffs' use of the word "forced" on several occasions in this passage are clearly characterizations rather than objective statements of fact. Although she was instructed to do certain things by her superiors in the Krishna faith, there is no evidence Robin was ever threatened with physical force if she failed to comply. Apart from the metaphysical question of brainwashing, there was every objective indication that Robin actively sought defendants' assistance and fully cooperated in their efforts to hide her from her parents.

gives rise to an action for intentional infliction of emotional distress." (46 Cal.3d at p. 1120) In the discussion which follows, the court makes it abundantly clear on more than one occasion that the allegations of fraud are an essential part of the plaintiffs' emotional distress claim.[25]

Similarly, the recent Court of Appeal decision in *Wollersheim v. Church of Scientology* (1989) 212 Cal.App.3d 872 does not support Robin's claim. In *Wollersheim*, the plaintiff was coerced into remaining a member of the Church of Scientology and participating in religious activities by physical force and threats of economic sanctions. The court held that where the church member's participation was involuntary in the sense that it was coerced by force and threats, the religious nature of the activities would not insulate a church from an otherwise proper claim for intentional infliction of emotional distress. (*Id.* at p. 897.) Here, as we have emphasized, there was simply no physical force used. (See *ante*, fn. 24.) Neither was there evidence of threats of

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[25] *Molko* rejects the church's arguments in the following language: "The Church offers two arguments why its conduct was not, as a matter of law, extreme and outrageous. First it contends its actions amounted to nothing more than 'intensive religious practice,' and therefore were different only in degree, not in kind, from those of many other religious groups. We find this claim unconvincing. Although fasting, poverty, silence or cloistered living may constitute intensive religious practice, *we have already determined that fraud*, even though purported to be religiously motivated, *is actionable conduct* under the circumstances presented here.

"Second, as mentioned above, the Church argues that Leal's long hours of work were 'self-inflicted.' It contends its encouragement for her to sell flowers and solicit money does not constitute outrageous conduct. But since the conduct that the Church relies on occurred after Leal had formally joined the Church, the argument has no bearing on *whether its original fraudulent inducement into an atmosphere of coercive persuasion – the conduct at issue* – is extreme and outrageous.

Viewed in the light most favorable to plaintiffs, the Church's *continued deceptions* might well be seen as conduct breaching plaintiffs' trust in the integrity of those who were promising to make their lives more meaningful." (46 Cal.3d at p. 1122, italics added.)

economic sanctions. To the extent *Wollersheim* can be read as expanding *Molko* beyond the strict fraud context, that expansion is nonetheless inapplicable on the facts of this case.

III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AS TO MARCIA

Defendants contend generally that the evidence is insufficient to support the verdict in favor of Marcia on her claim for intentional infliction of emotional distress. Even if the evidence is sufficient, however, they assert the judgment in her favor must be reversed because it is possible the jury based its damage award in part on distress caused by defendants' constitutionally protected activity. Finally, they also argue that Marcia's claim is barred as a matter of law by the statute of limitations.

Sufficiency of the Evidence

It is only by relying on a narrow and restrictive view of the facts and plaintiffs' arguments that defendants can contend Marcia's claim for intentional infliction of emotional distress was not supported by substantial evidence. The record fully supports the conclusion that defendants encouraged Robin to run away from home occasions, promising to send her "someplace where your parents will never find you." Thereafter, while pretending to be ignorant but cooperative, the various leaders of the Krishna movement systematically planned and carried out ruse after deception in an effort to wear down the Georges and put law enforcement officials off the track.

In a preceding section of the opinion we rejected the Georges' contention that anyone who entices a minor child away from the custody of her parent or conceals such a child from the parent is liable for false imprisonment. (*Ante*, pp. 762-765.) The same conduct may, however, give rise to a cause of action on behalf of the parent for intentional infliction of emotional distress where the defendant recklessly

disregards the probability that it will cause the parents severe emotional suffering.

Defendants respond to this suggestion at several levels. Focussing on the contention that they misrepresented their lack of knowledge of Robin's whereabouts, they argue that such misrepresentations were, if anything, calculated to avoid causing the Georges the emotional distress which would have been occasioned by disclosure of the truth. The argument fails for two distinct reasons. First of all, as a factual matter, it is simply incorrect. For much of the time, the Georges did not know where there daughter was or what condition she was in. It is hardly surprising that this uncertainty was a significant cause of emotional distress. Even knowing she was living in a Krishna temple in New Orleans or Ottawa would have greatly eased their apprehension. Moreover, defendants knew that the Georges tirelessly continued to search for Robin and were keenly aware of their frustrations when the Georges began their public relations campaign against the Southern California Krishna temples.

In addition, it is misleading to focus on the misrepresentations of Krishna ignorance as the sole or even primary basis for Marcia's emotional distress claim. The essence of the actionable conduct here was the conspiracy among defendants and other ISKCON agents to assist Robin in running away and to conceal her from her parents, which they knew was likely to cause the Georges severe emotional suffering.[26]

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[26] We also reject defendants' contention that they have been unconstitutionally subjected to tort liability for merely preaching "that a religion may be most fully or successfully practiced in a religious community" and opining that "a minor's parents will not let the minor practice Krishna consciousness while living at home." Because the actionable conduct here involved far more than the mere preaching of religious beliefs or making statements of opinion, we need not consider whether religiously motivated importuning of a minor to leave his parent or guardian, standing alone, is absolutely protected or is subject to some sort of "clear and present danger" test. (Cf. *Schenck v. United States* (1919) 249 U.S. 47, 52; *Whitney v. California* (1927) 274 U.S. 357 U.S. 357,

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Feigned ignorance was only one aspect of this reprehensible activity. The purchase of plane and bus tickets, disguises, fake photographs, fraudulent letters and arguably the libelous "Official Position" news release (see *ante*, pp. 757-758) were all part and parcel of the conspiracy and provide a more than adequate basis for concluding that defendants engaged in outrageous conduct " 'exceeding all bounds usually tolerated by a decent society.' " (*Agarwal v. Johnson, supra*, 25 Cal.3d at p. 946, quoting *Newby v. Alto Riviera Apartments* (1976) 60 Cal.App.3d 288, 297; see also *Molko v. Holy Spirit Assn., supra*, 46 Cal.3d at p. 1122.)

Defendants also argue that Marcia's emotional distress claim is simply a covert attempt to resurrect her earlier pleaded cause of action based on Civil Code section 49[27] for abduction or enticement of a minor child which was dismissed pretrial after a demurrer was sustained without leave to amend. Marcia has not filed a cross-appeal on the ground that such demurrer was improperly sustained and the sufficiency of the earlier pleading is not before us. Regardless of whether the facts proved at trial would have supported such a cause of action, Marcia cannot be precluded from prosecuting her action on an emotional distress theory where, as we have indicated, all elements of that cause of action have been satisfied.[28]

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372-373 (conc. opn of Brandeis, J.); *Brandenburg v. Ohio* (1969) 395 U.S. 444, 447.)

[27] Section 49 provides in relevant part: "The rights of personal relations forbid . . . [t]he abduction or enticement of a child from a parent, or from a guardian entitled to its custody . . . ."

[28] For reasons which should be apparent from the tenor of our discussion, we also reject defendants' contention that the award of $400,000 compensatory damages to Marcia was excessive as a matter of law because it could only be based on her reaction to her daughter leaving home, an event for which the defendants were not responsible.

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Constitutionally Protected Activity as a Basis for Liability

For the first time at oral argument, counsel for defendants appeared to concede that the evidence at trial might support a cause of action for intentional infliction of emotional distress. He argued instead that the case was presented to the jury in such a way as to allow it to award damages to Marcia caused not only by defendants' tortious conduct but also by their constitutionally protected activity. Specifically, counsel suggested that the jury's verdict could have included amounts intended to compensate Marcia for the distress she suffered because Robin converted to and practiced a religion foreign to her own. Defendants rely on a line of United States Supreme Court cases which state that where the record is insufficient to eliminate the possibility that a criminal or civil judgment is based in whole or in part of conduct protected by the First Amendment, it must be reversed. (See, e.g., *NAACP v. Claiborne Hardware Co.* (1982) 458 U.S. 886, 923; *Street v. New York* (1969) 394 U.S. 576, 589-590; *Stromberg v. People of the State of California* (1931) 283 U.S. 359, 367-368.) Although they did not object to the emotional distress instructions on this ground in the trial court or

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We also reject plaintiffs' contention raised in their cross-appeal that the trial court's inadequate statement of reasons in support of the conditional new trial order requires that the original jury award of $1.5 million be reinstated. (See generally *Mercer v. Perez* (1968) 68 Cal.2d 104.) As we explain in more detail in the section of this opinion dealing with punitive damages (*post*, p. 796), if we concluded that the statement of reasons was inadequate, we would then be required to evaluate the greater jury verdict amount to determine whether it was excessive. On the facts of this case, we think $1.5 million is clearly an excessive amount to compensate for emotional distress without physical injury or disabling consequences. We do not believe an award in excess of $400,000 could be justified. (See *Wollersheim v. Church of Scientology, supra*, 212 Cal.App.3d at pp. 905-906 (reducing an emotional distress damage award to $500,000 in a case involving "permanent and severe" psychological injury).)

propose a specific limiting instruction, defendants now effectively assert that Marcia's emotional distress award must be reversed because the jury was not specifically warned it could not assess damages based on their constitutionally protected proselytization of Robin. (See *Founding Church of Scientology v. United States* (D.C. Cir. 1969) 409 F.2d 1146, 1164, fn.2 (opn. on rhg.).)

Assuming the contention is properly before us, our review of the record convinces us that the damages awarded in this case were not based on defendants' constitutionally protected activity. Although the jury was only instructed in general terms on intentional infliction of emotional distress, these instructions did specify that the actionable conduct had to be "extreme and outrageous" going beyond "all possible bounds of decency so as to be regarded as atrocious and utterly intolerable in a civilized community." That constitutionally protected proselytization hardly fits this description was emphasized in later instructions which explained that the First Amendment "envision[s] the widest possible toleration of conflicting views" and "does not select any one group or any one type of religion for preferred treatment." The jury was also instructed that ISKCON "is a religion under the United States Constitution. . . ." It is inconceivable that the jury could have regarded the preaching activities of orthodox religions – even to minors – as "extreme and outrageous" conduct.

More importantly, Marcia George's testimony itself refuted any suggestion she was claiming emotional distress damages based on her daughter's conversion to and practicing of the Krishna religion. In response to defense counsel's question, "When did Mr. Richard first inflict emotional distress upon you?" Marcia replied, "Possibly a month or so prior to [November 16, 1974] when he began telling my daughter that she would have to leave home." This testimony makes it clear Marcia based her claim on the defendants' actions in causing Robin to leave home, not on their proselytizing Robin to accept the Krishna faith which began in August 1974.

In addition, closing argument by plaintiff's counsel makes no suggestion the jury was to award damages based on the emotional distress suffered by Marcia as a result of Robin's conversion. Instead, counsel focused on precisely the same facts we recited in the preceding subsection when discussing the sufficiency of the evidence: "You take a child like Robin, you hide her from her parents, you tell Jim George and Marcia George that if they don't leave you alone they are never going to see their daughter alive again, and you are going to bomb their car, and you lie to them, you are going to cause emotional distress.

"You send these phony letters through the mail where the parents are put to the test of proving to the police department solving the case for the police department, and you are causing severe emotional distress."

Finally, it must be remembered that in conditionally granting defendants' motion for new trial, the trial court reduced Marcia's damages from $1.5 million to $400,00. Thus, reversal would have to be premised on concern that both the jury *and the judge* attempted to compensate Marcia for the emotional distress caused by defendants' First Amendment activities. We find no basis in the record to assume the trial judge misunderstood the proper basis for an award of emotional distress damages. Moreover, we have reviewed the legitimate evidence in support of Marcia's claim and conclude the award of $400,000 was not excessive as a matter of law. (See *ante*, fn. 28.)

In short, this is not a case in which a plaintiff has been compensated "for the direct consequences of . . . constitutionally protected activity." (*NAACP v. Claiborne Hardware Co., supra*, 458 U.S. at p. 923.) To the contrary, we are able to say "with certainty" that Robin's conversion – and defendant's constitutionally protected actions to facilitate it – were not the basis for the judgment in favor of Marcia. (See *Street v. New York, supra*, 394 U.S. at p. 589.)

Statute of Limitations

Defendants also argue that Marcia's cause of action for intentional infliction of emotional distress is barred by the

statute of limitations since she filed her complaint in October 1977, more than one year after Robin returned home. Marcia responds that defendants' conspiracy was extended by the release of the Krishnas' allegedly libelous "Official Position Regarding Robin George" in October 1976. For legal support she directs our attention to *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773 in which the Supreme Court held that "when a civil conspiracy is properly alleged and proved, the statute of limitations does not begin to run on any part of a plaintiff's claims until the 'last overt act' pursuant to the conspiracy has been completed." (*Id.* at p. 786; see also *Livett v. F.C. Financial Associates* (1981) 124 Cal.App.3d 413, 418.)

Initially, defendants seek to distinguish *Wyatt* and limit its holding to the proposition that "a victim of fraud should be able to sue for an entire series of overlapping frauds when discovery of one is the discovery of all." Our reading of *Wyatt*, however, convinces us that the Supreme Court intended no such limited proposition. In explaining its conclusion, the court noted that "[s]tatues of limitations have, as their general purpose, to provide repose and to protect persons against the burden of having to defend against stale claims. [Citations.] So long as a person continues to commit wrongful acts in furtherance of a conspiracy to harm another, he can neither claim unfair prejudice at the filing of a claim against him nor disturbance of any justifiable repose built upon the passage of time." (24 Cal.3d at p. 787.) Such a rationale focus not on fairness to the victim but on the lack of unfairness to the defendant and applies equally to a conspiracy to inflict emotional distress as to one to commit a fraud.[29] Here, if the

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[29] One of defendants' arguments is merely a rehash of a contention rejected by the Supreme Court in *Wyatt*. Defendants state: "In contrast to its place in the criminal law, a charge of civil conspiracy is not itself an actionable wrong; it is the tortious conduct committed as a result of the conspiracy that is actionable. . . . Accordingly, when a tort is committed as a result of a conspiracy and the victim is aware that he has been injured by the tortious conduct, that statute of limitations begins running on that tort." This same contention was raised and rejected in *Wyatt*. (24 Cal.3d at pp. 786-787 and fn. 4; compare *id.* at pp. 795-796 (conc. and dis. opn. of Richardson, J.).)

release of the "Official Position" was an overt act in furtherance of a continuing conspiracy, *Wyatt* holds that Marcia's claim is not barred by the statute of limitations.

Defendants' raise two additional arguments. First they contend that plaintiffs failed to prove any conspiracy at all because the members of the alleged conspiracy (affiliated religious corporations and agents of those corporations) are legally incapable of conspiring with each other. Even if a conspiracy is theoretically possible, defendants assert the evidence establishes as a matter of law that whatever conspiracy existed in late 1974 and 1975 involving the transportation and concealment of Robin George necessarily ended in November 1975 when she returned home to her parents. Thus, they claim the release of the "Official Position" was not an overt act in furtherance of any existing conspiracy.

We can assume arguendo defendants are correct that an allegation of conspiracy based on an agreement solely between related corporate entities would be insufficient because a corporation cannot conspire with itself. (See *Shasta Douglas Oil Co. v. Work* (1963) 212 Cal.App.2d 618, 624.) It is well established, however, that officers and agents of a corporation may conspire to injure third persons through the corporation. (*Wyatt v. Union Mortgage Co., supra*, 24 Cal.3d 773, 785; *Golden v. Anderson* (1967) 256 Cal.App.2d 714, 719-720; see also *Doctors' Co. v. Superior Court* (1989) 49 Cal.3d 39, 48.) Here, the evidence was sufficient to show a conspiracy between defendants Rsabadeva and Nityananda which also included unnamed co-conspirators Jayatirtha, Am Su and perhaps others.

The more difficult question is defining the scope of the proven conspiracy. We have earlier characterized our reading of the record as showing a conspiracy "to assist Robin in running away and to conceal her from her parents, which [defendants] knew was likely to cause the Georges severe emotional suffering." (*Ante* p. 770.) There is no question this was the gist of the conspiracy in November 1974 when Robin first left home, traveled to San Diego and flew from there to

New Orleans. Hiding Robin continued to be the sole object of the conspiracy at least until June 1975 when the Georges began their public relations campaign against the Krishna temples in Southern California. At that point, the jury could have found that a secondary object of the conspiracy became the infliction of emotional distress on the Georges. It was then the Krishna leadership began to view the Georges as an independent "enemy." Certainly Rsabadeva's threat to blow up the Georges' car and the related warning that the Georges might never see Robin alive again are consistent with such a conclusion. Similarly interpretable is much of the language in Robin's "Mexico letter" to her parents, drafted by Nityananda, an admitted purpose of which was to cause the Georges to stop their public anti-Krishna campaign. It is established that the objects and purposes to which the conspirators have agreed may be inferred from all the surrounding circumstances including the nature of the tortious acts and the relationship and interests of the parties. (*Wyatt v. Union Mortgage Co., supra,* 24 Cal.3d at p. 785; *Chicago Title Ins. Co. v. Great Western Finanical Corp.* (1968) 69 Cal.2d 305, 316.)

If the object of the conspiracy changed in June 1975 to include the infliction of emotional distress on the Georges, it was within the jury's prerogative to conclude that the libelous "Official Position" was an act in furtherance of that continuing conspiracy. The fact that approximately 11 months passed between Robin's return home and the press conference does not necessarily indicate that the conspiracy ended. Clearly the Krishna leadership remained concerned enough about the Georges and their CFF activities to discover that Robin was going to speak at the press conference. It was a question of fact whether from the totality of circumstances it could be reasonably inferred that the conspirators contemplated further acts against the Georges. Nor is it of any significance that not all of the individual or entity defendants were involved with or even aware of the "Official Position." The fundamental purpose of the civil conspiracy concept is to make each conspirator liable as a joint tortfeasor "whether or not he

actually committed the wrongful act." (*Barney v. Aetna Casualty & Surety Co.* (1986) 185 Cal.App.3d 966, 983; 5 Witkin, Summary of Cal. Law, *supra*, Torts, § 44, p. 107.)

Even if the object and purpose of the conspiracy were never to inflict emotional distress on the Georges, still the conspiratorial agreement was consistently characterized by a conscious and callous disregard for the Georges' feelings as parents. The jury found that at a minimum the "Official Position" was characterized by a similar disregard for Marcia's rights. We think the rationale underlying *Wyatt v. Union Mortgage Co.* supports if not compels the conclusion that where a conspiratorial agreement contemplates the reckless disregard of an individual's rights and where one or more of the conspirators later commit a similarly reckless act related to, although not strictly in furtherance of the object of the conspiracy, the defendants "can neither claim unfair prejudice at the filing of a claim against [them] nor disturbance of any justifiable repose built upon the passage of time." (24 Cal.3d at p. 787.)

Accordingly, we conclude the record is sufficient to support the jury's conclusion that Marcia's claim for intentional infliction of emotional distress was not barred by the statute of limitations.

IV

Libel

Robin and Marcia's libel causes of action are based on the "Official Position" prepared by Makunda and distributed to members of the media and others at the October 29, 1976, Citizens Freedom Foundation (CFF) news conference by devotees from the Los Angeles temple. (*See ante*, pp. 757-758). The "Official Position"[30] read in part: "Robin came to our temple and complained of being beaten by [her parents]. Once she told us that they had chained or tied [*sic*] her to her bed, and that they had forced a piece of hose down her throat to stop her chanting and singing. . . . There's a history of this

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[30] See full text of the "Official Position," *ante* at footnote 14.

girl running away from her family because of what she told us to be cruelty, beatings, [and] harsh treatment. . . . For all we know now, her accounts of brutality and beatings were exaggerated or totally fabricated." In addition to finding defendants liable to Marcia and Robin on the libel causes of action, the jury also answered special interrogatories specifically finding that neither Marcia nor Robin were public figures or private individuals engaged in an event of public interest and that defendants had published their "Official Position" with actual malice.

Civil Code section 45[31] defines libel as "a false and unprivileged publication by writing . . . which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." Truth is a complete defense to civil liability for libel and the defendant need not justify every word of the allegedly defamatory matter so long as the substance, gist or sting is proved true. (*Davis v. Hearst* (1911) 160 Cal. 143, 195; *Hearne v. De Young* (1898) 119 Cal. 670, 674; 5 Witkin, Summary of Cal. Law, *supra*. Torts, §§ 494-495, pp. 583-584.)

Defendants challenge the verdict on numerous grounds: (1) the evidence produced at trial establishes that the content of the "Official Position" was true; (2) the instructions on "libel per se" were confusing; (3) the court improperly instructed the jury that defendants had the burden of proving truth; (4) the "Official Position" was privileged under the common law doctrine of fair comment; and (5) *New York Times Co. v. Sullivan* (1964) 376 U.S. 254 precludes the imposition of liability on the facts of this case.

We conclude there is insufficient evidence to support the libel verdict in favor of Robin and therefore reverse the judgment as to the third cause of action. As to Marcia, however, we believe defendants' contentions must be rejected. There is substantial evidence to support the jury's

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[31] All statutory references in the discussion of the libel causes of action are to the Civil Code unless otherwise specified.

implied finding that the "Official Position" was false and defamatory. The claimed instructional errors, to the extent they exist, were either waived or harmless on the facts of this case. Finally, the "fair comment" and *New York Times* defenses are inapplicable on this record because there is substantial evidence that defendants published the "Official Position" with both common law and constitutional malice. Accordingly, we affirm the judgment in favor of Marcia on the fourth cause of action.

Robin's Cause of Action

We address two issues in our review of the libel verdict in favor of Robin: whether the challenged portion of the "Official Position" is fact or opinion and whether it is true or false.

"Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." (*Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 339-340.) It is therefore essential to a libel cause of action that the alleged defamation contain a false statement of fact. (*Gregory v. McDonnel Douglas Corp.* (1976) 17 Cal.3d 596, 600.) In order to determine whether the defendant made a statement of fact, the decisionmaker[32] must place itself in the position of the reader and

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[32] This ambiguous reference is intentional. As one federal court has explained, "[T]he overwhelming weight of post-*Gertz* authority [is] that the distinction between opinion and fact is a matter of law." (*Ollman v. Evans* (D.C. Cir. 1984) 750 F.2d 970, 978.) The California Supreme Court appeared to adopt this approach in *Gregory v. McDonnell Douglas Corp., supra*, 17 Cal.3d 596, 601. Then, in *Good Government Group of Seal Beach, Inc. v. Superior Court* (1978) 22 Cal.3d 672, 681-682, the court proffered a seemingly contrary rule, holding that it frames a jury question unless the court can "as a matter of law characterize it as either stating a fact or an opinion." (*Id.* at p. 682.) *Gregory* was ostensibly distinguished: "that remains the rule if the statement unambiguously constitutes either fact or opinion." (*Ibid.*) Recently, however, in *Baker v.*

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"determine the sense or meaning of the statement according to its natural and popular construction" based on the language of the statement and the context within which it was made. (*Baker v. Los Angeles Herald Examiner, supra.* 42 Cal.3d at pp. 261-262.)

We conclude as a matter of law that the portion of the "Official Position" which states "[f]or all we know now, [Robin's] accounts of brutality and beatings were exaggerated or totally fabricated" is a statement of opinion, not fact, and therefore not actionable. The use of the prefatory language "for all we know now" alerted readers that defendants were merely expressing their opinion regarding the truth of Robin's supposed earlier accounts of brutality at the hands of her parents. As the Supreme Court recently explained in *Baker*, "Where the language of the statement is 'cautiously phrased in terms of apparency,' the statement is less likely to be

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Los Angeles Herald Examiner (1986) 42 Cal.3d 254, the court stated uncategorically that "whether the statement at issue was a statement of fact or a statement of opinion . . . is a question of law to be decided by the court." (*Id.* at p. 260.) In support of this proposition, the *Baker* court cited *Gregory* but made no mention of *Good Government*.

We view the *Good Government* formulation as merely a restatement of the general rule applicable to summary judgments and appellate review of sufficiency-of-the-evidence contentions: Factual questions are for the trier of fact to resolve unless reasonable jurors could only reach a single conclusion, in which case the court may determine the issue as a matter of law. (See, e.g., *Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 971; *Bigbee v. Pacific Tel & Tel. Co.* (1983) 34 Cal.3d 49, 56.) As such, *Good Government* has been criticized by at least one federal court. (See *Jankow v. Newsweek, Inc.* (8th Cir. 1986) 788 F.2d 1300, 1305, fn. 7; see also *Hoffman Co. v. E. I. Du Pont de Nemours & Co.* (1988) 202 Cal.App.3d 390, 398, fn. 5.)

If our reading of *Good Government* is correct, it seems clearly inconsistent with the *Baker* standard and may have been sub silentio overruled by *Baker*. We need not decide that question here. As we explain, we are convinced no reasonable juror could interpret the statement as expressing other than the opinion of the authors as to Robin's veracity. (See *ante*, this page.)

reasonably understood as a statement of fact rather than opinion." (42 Cal.3d at pp. 260-261, quoting *Gregory, supra*, 17 Cal.3d at p. 603, fn. omitted.) Here, we do not think the quoted statement can be reasonably understood as expressing other than the *belief* Robin may have been lying.

We also conclude there is insufficient evidence to support a conclusion that the remaining portion of the alleged defamation was false as to Robin. The statement that Robin had a "history of . . . running away from her family" was true in the context of the "Official Position" which described two such incidents. There is no dispute that Robin left home initially to join the movement and ran away a second time after she had been returned from the New Orleans center. Statements that Robin had a history of running away *because* of what she described as "cruelty, beatings [and] harsh treatment" do not libel *Robin* even if she never made those claims to the Krishna devotees. If anything, references to bad treatment would have justified Robin's behavior in the eyes of the average reader.

Accordingly, the judgment on the third cause of action must be reversed.

Marcia's Cause of Action

A

A gist of the alleged libel as to Marcia was in calling her a child beater. The court instructed the jury that "[t]he defamatory nature of a false and unprivileged publication must be determined by the natural and probable effect of the publication on the mind of the average reader. Consequently, if the average reader would regard it as a defamatory publication, it may be libelous on its face, even though it is susceptible of innocent meaning."

Defendants assert that the "only error [in the 'Official Position'] lay in the possible implication that Robin said that these things occurred before she left home the first time," but go on to say the error in chronology was "totally immaterial." We question the first assertion. Robin testified that her father slapped her once on the flight home from New Orleans in

April 1975. She apparently told various people she had been slapped by both her mother and father. There is a significant difference, however, between a parent "slapping" and "beating" a child. We think the jury could reasonably have found that distinction critical in this case.

In any event, viewing the evidence and all reasonable inferences in the light most favorable to the verdict, we think the jury could also have determined that the average reader would have regarded the chronology as critical to the sting of the message conveyed in defendants' "Official Position." The clear implication was that Robin came to defendants' temple *initially* because her parents mistreated her. It is one thing to say that parents restrained their daughter to prevent her from running away again. It is quite another to say that a daughter ran away from home because her parents mistreated her by tying her to a bed. By any definition, there was no evidence suggesting physical mistreatment of Robin prior to her leaving home the first time. It is therefore clear that the chronology described in the "Official Position" was false.

B

Section 45a states that "[a] libel which is defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact, is said to be a libel on its face," or libel per se. Such a statement is actionable if reasonably understood by the reader as conveying a defamatory meaning, *and* if false and unprivileged. (See *Slaughter v. Friedman* (1982) 32 Cal.3d 149, 154 and *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 642.) Whether a statement is libelous on its face is a question for the court. (*MacLeod v. Tribune Publishing Co.* (1959) 52 Cal.2d 536, 546.) "Defamatory language not libelous on its face is not actionable unless the plaintiff alleges and proves that he suffered special damage as a proximate result thereof." (§ 45a.)

Here the court began with various instructions which described falsity as an essential element of libel. Having determined as a matter of law that the "Official Position" was

libelous on its face as to Marcia, the court then instructed the jury using BAJI No. 7.09, Sixth edition 1977 (1982 pocket pt., p. 54) the standard instruction on libel per se in use at the time of trial: "The court has determined as a matter of law that the statement 108B in evidence is libelous on its face with regard [to] Marcia George, plaintiff, only.

"You are required to determine whether or not said statement was published by the defendant.

"Two, if you find that said statement was published by the defendant, then you must determine whether or not the defendant intended the publication, and the natural and probable effect on the average reader was to defame plaintiff, Marcia George. If you so find, then you must determine whether or not the publication of said statement by defendant was a legal cause of damage to plaintiff, Marcia George.

"If you so find, then you must determine the nature, character and extent of such damage in accordance with my instruction on damages."

We agree with defendants that these instructions are potentially misleading because they fail to explain that the jury is still required to determine whether the statement was false. The instructions state that the "Official Position" is libelous on its face and proceed to outline what a reasonable jury could interpret as a comprehensive list of what it was required to determine in order to return a verdict for Marcia.[33]

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[33] The current version of BAJI No. 7.09 corrects this omission: "The court has determined that the statement ___ is [libelous] [slanderous] [if untrue].

"You are required to determine:

"1. Whether or not said statement was [untrue and] intentionally published by the defendant.

"2. If so, whether or not the natural and probable effect on the average [reader] [listener] was to defame plaintiff.

"3. If so, whether or not said publication was a [legal] [proximate] cause of damage to plaintiff.

"4. If so, then you must determine the nature, character and extent of such damage." (BAJI No. 7.09 (7th ed. 1986) p. 268.)

We cannot conclude, however, that this potentially misleading instruction requires reversal. First of all, the instructions which immediately preceded the "libel per se" instruction emphasized that truth was an absolute defense: "Since falsity is an essential element of libel, the fact that the published statement is true is *always* a complete defense, regardless of bad faith or malicious purpose.[¶] Defendants have pleaded the defense of truth to the plaintiffs cause of action for libel. If this defense has been established, it is a complete defense and bars plaintiffs claimed cause of action for libel." (Italics added.) Thus, while the instruction given was potentially misleading in the abstract, we think it highly unlikely the jury was actually misled.

Moreover, despite defendants' protestations to the contrary, the falsity of the "Official Position" was not a critical issue in the case. Defendants virtually concede it was false at least as to chronology. (See *ante*, p. 780.) They argue instead that to the extent it was false, it was not defamatory because timing was not essential to the sting. As noted, however, even the challenged instruction specified that the jury was required to determine that "the natural and probable effect [of the publication] on the average reader was to defame plaintiff, Marcia George." Accordingly, any error in framing the instructions was harmless on the facts of this case.

C

The court instructed the jury on the common law rule that the defendant had the burden of proving the truth of the "Official Position."[34] (*Lipman v. Brisbane Elementary Sch.*

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[34] The court instructed the jury as follows: "Defendants have the burden of proving truth by a preponderance of the evidence as will be defined by this court. To establish this defense defendants must prove the truth of all relevant parts of the document.

"However, the defendants are not required to prove the truth of every word of the document, or to prove its literal truth. If defendants prove that the substance, the gist or the [inaudible] of the charge is true, it is sufficient to establish the defense of truth.

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Dist. (1961) 55 Cal.2d 224, 233.) Defendants cite *Philadelphia Newspapers, Inc. v. Hepps* (1986) 475 U.S. 767 and assert that the court should have placed the burden of proving falsity on the plaintiffs.

In *Hepps*, the United States Supreme Court held that in a defamation action against a media defendant by a public figure or a private figure involved in a matter of public concern, the First Amendment requires that the plaintiff bear the burden of proving falsity.[35] (475 U.S. at p. 777.) Defendants acknowledge that *Hepps* is facially limited to media defendants, but argue that the force of the decision's reasoning requires that it be extended to all defendants in cases involving expression on matters of public interest.

A major hurdle facing defendants is that they requested the instruction about which they now complain. Generally speaking, the doctrine of invited error precludes a party from challenging the correctness of an instruction he offered. (See *Morris v. Frudenfeld* (1982) 135 Cal.App.3d 23, 33-34; 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 302, p. 314.) Defendants respond that the United States Supreme Court's intervening decision in *Hepps* should excuse their failure to present the issue to the trial judge. They rely on *Marsango v. Automobile Club of So. Cal.* (1969) 1 Cal.App.3d 688, 694, which suggested that an appellant should be permitted to raise an issue for the first time on appeal "where after trial there is a change in judicially declared law which validates a theory that would under the case law as it existed at the time of trial

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"Moreover, the defendants need only prove the substance of the document is true, irrespective of slight inaccuracies in detail."

[35] We recognize that the jury returned a special finding that Marcia was not a public figure or a private figure involved in an event of public interest. Such a finding, if supported by the evidence, would provide an independent basis for refusing to apply *Hepps*. As we explain later, however, we seriously question at least the finding that the "Robin George affair" was not a matter of public concern by the time of the CFF press conference. (See *post*, p. 787-788.)

necessarily have been rejected if presented to the trial court. . . ."

We question whether the narrow exception suggested by *Marsango* applies here. Defendants concede that *Hepps* does not govern this case because defendants are not members of the media. Thus, while it may be that *Hepps* supports defendants' argument, it can hardly be said to "validate [their] theory." Moreover, defendants' proposed instruction placed the burden of proof on defendants regardless of plaintiffs' status as public figures. Yet the United States Supreme Court suggested as early as *Garrison v. Louisiana* (1964) 379 U.S. 64, that in order to prevail, public officials and inferentially public figures must "establish[ ] that the utterance was false," (*Id.* at p. 74.)[36] Finally, the State of California law at the time of trial was not such as to necessarily require the rejection of defendants' burden-of-proof contention. Although California has traditionally placed the burden of proving truth on the defamation defendant (see *Lipman v. Brisbane Elementary School Dist., supra,* 55 Cal.2d at p. 233), we are unaware of any case which addresses defendants' contention that placing the burden on the plaintiff is compelled by the federal Constitution. In fact, the Court of Appeal in *Field Research Corp. v. Patrick* (1973) 30 Cal.App.3d 603, 611-612 acknowledged a defendant's identical constitutional argument but found it unnecessary to resolve the question. This, coupled with the cases from other jurisdictions decided before the trial in this case which state that a defamation plaintiff is constitutionally compelled to bear the burden of proving falsity (see, e.g., *Goldwater v. Ginzburg* (2d Cir. 1969) 414 F.2d 324, 338 (public officials and public figures); *Steaks Unlimited Inc. v. Deaner* (3d Cir. 1980) 623 F.2d 264, 274 and fn. 49 (dicta); *Sellers v. Time, Inc.* (E.D.Pa. 1969) 299 F.Supp. 582, 584, fn. 2 (matter of public concern); *Farnsworth v. Tribune Company* (1969) 43 Ill.2d 286 (matter of public concern)), lead us to

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[36] In fact, defendants are apparently of the view that this principle "has been established for some time," a concession we view as equally correct at the time of trial.

conclude that defendants are not entitled to relief from the doctrine of invited error.[37]

D

Defendants also contend that Marcia's libel judgment is barred by either one or both of two independent but related doctrines: (1) the federal constitutional limitations embodied in *New York Times Co. v. Sullivan, supra*, 376 U.S. 254 and its progeny; and (2) the conditional privilege of "fair comment," which until recently appeared to have both common law and statutory sources. Because these doctrines have significant common roots and because they were presented to this jury in an overlapping fashion, we consider them together. We begin our discussion with a review of the applicable law in the abstract. We then describe and address defendants' specific contentions.

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In *New York Times Co. v. Sullivan*, the United States Supreme Court held that recovery by a public official for defamation concerning his official conduct requires proof that the statement was made with "actual" or "constitutional" malice.[38] The court defined constitutional malice as

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[37] Even assuming defendants could raise the issue of instructional error, and further assuming *Hepps* would apply in the case of a nonmedia defendant, the court in *Hepps* was careful to point out that the burden of proof "is the deciding factor only when the evidence [regarding truth or falsity] is ambiguous. . . ." (475 U.S. at p. 776.) As we explained previously, defendants here virtually concede that the "Official Position" was false as to chronology. The crux of their argument is that a reasonable reader would not have viewed the falsity as defamatory because the described events actually occurred at a different time. (See *ante*, p. 780.) Defendants do not contend they were forced to assume the burden of proving that issue. In our view, there is no reasonable possibility the burden of proof instruction affected the verdict.

[38] *New York Times* refers to the concept only as "actual malice." Later decisions have substituted the term "constitutional malice" because

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"knowledge that [the statement] was false or with reckless disregard of whether [the statement] was false or not." (*Id.* at pp. 279-280.) "Recklessness" for the purpose of the *New York Times* standard was further defined in *St. Amant v. Thompson* (1968) 390 U.S. 727, 731 to mean that "the defendant in fact entertained serious doubts as to the truth of his publication."[39]

The court later extended the *New York Times* rule to "public figures" (*Curtis Publishing Co. v. Butts* (1967) 389 U.S. 130) and defined two classes of public figures: those

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of confusion between "actual malice" in the *New York Times* sense, which focuses on the defendant's attitude toward the truth of the publication, and common law "actual malice," which has traditionally signified hatred of or ill will toward the plaintiff. (See, e.g., *Ryan v. Brooks* (4th Cir. 1980) 634 F.2d 726, 731, fn.4; *Tate v. Bradley* (5th Cir. 1988) 837 F.2d 206, 207; see also *Owens v. Okure* (1989) 488 U.S. ___, 109 S.Ct. 573, 581; *McNair v. Worldwide Church of God* (1987) 197 Cal.App.3d 363, 376; see generally *Greenbelt Pub. Assn. v. Bresler* (1970) 398 U.S. 6, 9-11; *Cantrell v. Forest City Publishing Co.* (1974) 419 U.S. 245, 252.) In the interests of avoiding such confusion, we will employ the term "constitutional malice" when referring to the *New York Times* concept.

[39] The only *New York Times* instruction given in this case, BAJI No. 7.04 (6th ed. pocket pt.), was offered by defendants: "A published statement about a public figure or a private individual engaged in an event of public interest is absolutely privileged, even if false and untrue, unless the publication was made by the defendant with actual malice or a reckless disregard for the truth." As a *New York Times* instruction, however, BAJI 7.04 suffers from two glaring errors. First, following *Gertz v. Robert Welch, Inc. supra*, 418 U.S. 323, the *New York Times* standard applies to public figures but does not apply to private individuals engaged in an event of public interest. The "public interest" standard of *Rosenbloom v. Metromedia, Inc.* (1971) 403 U.S. 29 was specifically rejected in *Gertz* (See 418 U.S. at p.346.) Second, the *New York Times* decision defined "actual malice" as "knowledge that [the statement] was false or with reckless disregard of whether it was false or not." (376 U.S. at pp. 279-280.) The slightly different formulation included in this instruction becomes fundamentally inaccurate when one realizes that "actual malice" was later defined for the jury using only the common law "hatred or ill will" formulation.

who become public figures for all purposes and in all contexts, and those who voluntarily inject themselves into public controversy and thereby become public figures for a limited range of issues. (*Gertz v. Robert Welch, Inc., supra,* 418 U.S. 323, 351; see also *Time, Inc. v. Firestone* (1976) 424 U.S. 448; *Hutchinson v. Proxmire* (1979) 443 U.S. 111; *Wolston v. Reader's Digest Assoc.* (1979) 443 U.S. 157.) Whether a plaintiff is a public official or public figure is a question of law for the court to decide. (*Rosenblatt v. Baer* (1966) 383 U.S. 75, 88 (public official); *Waldbaum v. Fairchild Publications, Inc.* (D.C. Cir. 1980) 627 F.2d 1287, 1293, fn. 12 (public figure); *Rebozo v. Washington Post Co.* (5th Cir. 1981) 637 F.2d 375, 379 (public figure).) Recently, clarifying an ambiguous reference in *Gertz*, the Court explained that were the subject of alleged defamatory statement is a matter of public concern, the First Amendment prohibits the award of presumed or punitive damages absent a showing of constitutional malice. (*Dun & Bradstreet, Inc. v. Greenmoss Builders* (1985) 472 U.S. 749, 757-761.)

A primary source for the *New York Times* standard was the common law conditional right or privilege of fair comment. (See *New York Times, supra,* 376 U.S. at pp. 280-281 and fn. 20.) The scope of the fair comment right in California was recently clarified by our Supreme Court in *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711. Earlier decisions had suggested that the common law fair comment doctrine was incorporated into Civil Code section 47, subdivision 3. (See, e.g., *Snively v. Record Publishing Co.* (1921) 185 Cal. 565, 571; *Maidman v. Jewish Publications, Inc.* (1960) 54 Cal.2d 643, 651-652.)[40] *Brown* rejected this suggestion,

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[40] Section 47, subdivision 3 reads: "A privileged publication or broadcast is one made –

"....

"3. In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such relation to the person interested as to afford a reasonable ground for

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holding that fair comment was a limited common law doctrine largely coincident with the federal *New York Times* standard, protecting nonmalicious statements concerning public officials and public figures.[41] (48 Cal.3d at pp. 723, 732, 734 and fns. 18 and 19.)

The right or privilege of fair comment does not extend to statements published with common law malice, which has been defined as hatred or ill will toward the plaintiff or the lack of reasonable grounds for believing the statements are true. (*Manguso v. Oceanside Unified School Dist.* (1984) 153 Cal.App.3d 574, 580.) Where the facts and circumstances under which a defamatory statement is made are undisputed, the existence of the fair comment privilege is a question of law. (*Gantry Constr. Co. v. American Pipe & Constr. Co.*

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supposing the notice for the communication innocent, or (3) who is requested by the person interested to give the information."

In *Snively v. Record Publishing Co., supra,* the Supreme Court reasoned that "the official conduct of public officers . . . is a matter of public concern of which every citizen may speak in good faith and without malice." (185 Cal. at p. 571.) As such, the general public appeared to be "persons interested" within the meaning of section 47, subdivision 3. (*Id.* at p. 572; accord *Kramer v. Ferguson* (1964) 230 Cal.App.2d 237, 242.)

[41] *Brown* relied on *Gertz v. Robert Welch, Inc., supra,* 418 U.S. 323 in dismissing the media defendant's argument that the right of fair comment should extend to any statement concerning a subject of "public interest." Interestingly, perhaps reflecting the ebb and flow of decisions in this area applying concepts with common analytic roots but distinct doctrinal evolution, the United States Supreme Court in two recent cases has in a sense retreated from *Gertz* and articulated a difference in standards which turns not on whether the plaintiff is a "public figure" but on whether the content of the allegedly defamatory statement involved a matter of "public concern." (See *Dun & Bradstreet, Inc., supra* 472 U.S. 749 (plaintiff must establish constitutional malice to recover presumed and/or punitive damages where statement involves a matter of public concern); *Philadelphia Newspapers v. Hepps, supra,* 475 U.S. 767 (plaintiff bears burden of proving falsity of statement by media defendant on issue of public concern).)

(1975) 49 Cal.App.3d 186, 197; *Kramer v. Ferguson, supra,* 230 Cal.App.2d at p. 244.) Ordinarily the only question left for the jury is whether the plaintiff can demonstrate that in making the statement, the defendant acted with common law malice. (*Gantry Constr. Co. v. American Pipe & Constr. Co., supra,* 49 Cal.App.3d at p. 197.)

2

The thrust of defendants' argument is that the evidence established as a matter of law that Marcia was a public figure, that the "Official Position" concerned a subject of public interest and concern and that defendants did not publish the statement with either common law or constitutional malice. In more basic terms, defendants argue that the libel judgment in favor of Marcia is not supported by the evidence due to application of the *New York Times* and fair comment doctrines. We emphasize that generally, defendants do not challenge the correctness of the jury instructions;[42] nor do they

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[42] We note in particular defendants do not challenge the trial court's failure to instruct the jury pursuant to *Gertz* and *Dun & Bradstreet* that a finding of constitutional malice is required to sustain an award of punitive damages where the libel relates to a matter of public concern. (See *ante,* pp. 785-786.) We assume this is because defendants, having failed to propose a correct instruction, must be viewed as having waived their right to complain. (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 335.)

Defendants do make two minor assertions of instructional error. In footnote references, they challenge BAJI No. 7.06 (6th ed. 1982 pocket pt.) as an inaccurate statement of the *New York Times* constitutional malice standard and for failing to explain that hatred or ill will in the common law malice context must be defendants' primary motivation. Having offered the 7.06 instruction without modification, however, any inaccuracy or inadequacy is plainly unreviewable. (See generally *Morris v. Frudenfeld, supra,* 135 Cal.App.3d at pp. 33-34; *Downing v. Barrett Mobile Home Transport, Inc.* (1974) 38 Cal.App.3d 519, 523.)

Contrary to defendants contention, this is not a case in which the trial court completely failed to instruct the jury on a critical issue. (See, e.g., *Herbert v. Lankershim* (1937) 9 Cal.2d 409, 482; *Paverud v. Niagara*

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complain about the theoretical propriety of the trial court's decision to submit the "public figure" and "public interest" issues to the jury. (See *ante*, p. 785.)

We have little difficulty concluding that the subject of the "Official Position" is a matter of "public concern." The CFF called a press conference to discuss the subject of the Hare Krishna "cult." The press release advertised, "Today you will hear statements made by ex-cult members (Hare Krishna) and parents and learn of their experiences first-hand." It was in response to this release that the "Official Position" was drafted after Makunda learned that Robin was going to speak at the press conference. The press conference and the "Official Position" were both directed to the public's legitimate concern with the means by which the Krishna temples attracted new members. The CFF claimed that Krishna converts were "brainwashed" and used Robin George as an example. ISKCON responded by way of the "Official Position" that Robin sought shelter in the temple after running away from her parents. In short, this was a classic case of a clash of opposing points of view on a matter of public interest.

Whether Marcia was a "public figure" is a much closer question. Defendants rely on Marcia's various activities on behalf of CFF including acting as chair of the Orange County chapter during 1977 and appearing on a television show with Robin in December 1976 to discuss their Krishna experiences. These activities, however, postdated the alleged libel. Generally speaking, an individual's status as a "public figure" must be determined by reference to conduct which *precedes* the

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Machine & Tool Works (1987) 189 Cal.App.3d 858, 863; *Distefano v. Hall* (1963) 218 Cal.App.2d 657, 672.) Here, the trial court gave instructions requested by the defendants which purported to cover the critical issues in the case but, in fact, covered them incorrectly. Under established law, this invited error estops defendants from complaining about the accuracy of the requested instructions. We also reject defendants' suggestion that the Orange County Superior Court rules, which require the use of standard BAJI instructions "insofar as practicable" (rule 306), mandate or even excuse the submission of legally incorrect standard instructions.

defamatory statement. (E.g., *Bruno & Stillman, Inc. v. Globe Newspaper Co.* (1st Cir. 1980) 633 F.2d 583, 591; *Waldbaum v. Fairchild Publications, Inc., supra*, 627 F.2d at p. 1295, fn. 19.) Strictly speaking, even Marcia's appearance at the press conference can be excluded from consideration because it occurred after the release of the "Official Position" and because there is no evidence any ISKCON officials knew that Marcia – as distinguished from Robin – would be making a public statement.[43]

Even assuming that Marcia could be classed a public figure, we believe there is substantial evidence which would support a jury finding that defendants acted with common law malice in publishing the "Official Position." As to constitutional[44] malice, of course, we do not simply review the sufficiency of the evidence but instead exercise our independent judgment in reviewing the record. (See *Bose Corp. v. Consumers Union of U.S., Inc.* (1984) 466 U.S. 485, 510-511; *McCoy v. Hearst Corp.* (1986) 42 Cal.3d 835, 845-846.) We nonetheless conclude the record firmly supports a finding that defendants acted with constitutional malice.

Makunda testified he did not talk with the central participants in the Robin George affair before drafting the "Official

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[43] Assuming her participation in the press conference could be considered, we think it likely Marcia would qualify as a public figure. Unlike the plaintiff in *Time, Inc. v. Firestone, supra*, 424 U.S. 448, 454-455, footnote 3, Marcia used the press conference as a forum in an attempt to affect the resolution of a public issue.

[44] We have serious concerns whether defendants can raise the issue of the sufficiency of the evidence to support a finding of "constitutional malice." As we noted earlier, it was defendants who requested the BAJI No. 7.04 and 7.06 instructions which, taken in combination, essentially told the jury that common law malice would suffice to establish constitutional malice. (See *ante*, fns. 39 and 42.) We question how a party, having proposed one set of incorrect instructions on an issue, can challenge the jury's finding on that issue measured against a different but correct statement of the law. (Cf. *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1534-1535.) Because the issue is of a constitutional magnitude, however, and out of an abundance of caution, we assume arguendo defendants have not waived their right to complain and proceed to consider the merits of their contention.

Position." He admitted he could not be "100 percent certain" the people he contacted were telling the truth. Makunda recalled being told Robin ran away the second time because of being mistreated but testified "I think that in my haste and being late at night I probably didn't specify that." We have difficulty believing the error in chronology resulted from mere mistake or inadvertence. Generally speaking, the trier of fact may reject testimony, even if uncontradicted, where the witness's demeanor, bias or a combination of surrounding circumstances lead the jury to conclude it is untrustworthy. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890; *Hicks v. Reis* (1943) 21 Cal.2d 654, 659-660; *People v. Bobeda* (1956) 143 Cal.App.2d 496, 500.) Here, Makunda had every reason to offer a "revisionist" history of the events leading up to the release of the "Official Position."

Makunda testified he relied in large part on Rsabadeva for the facts concerning Robin's involvement with the Krishna movement. For some reason he considered Rsabadeva to be reliable for information about Robin George although he doubted Rsabadeva's trustworthiness and truthfulness in other contexts based on his "general character." Again, the jury was entitled and we are inclined to reject this rather dubious testimony.

Defendants' admitted purpose in publishing the "Official Position" was to discourage the Georges from speaking out against defendants. The clear gist of the statements transferred blame for the incident to the Georges in order to exculpate defendants in the eyes of the press and the public. (See *Sanborn v. Chronicle Pub., Co.* (1976) 18 Cal.3d 406, 414.) There thus seems little question that defendants acted out of ill will toward Marcia and Robin. And given all the relevant circumstances – including the abundant evidence of official Krishna dishonesty in other contexts – we are convinced that the "Official Position" was prepared without regard for accuracy and that the defendants in fact "entertained serious doubts as to [its] truth. . . ." (*St. Amant v. Thompson, supra*, 390 U.S. at p. 731.)

V

WRONGFUL DEATH

Jim George was diagnosed in May 1974 as suffering from myopathy, a condition characterized by an enlarged and weakened heart muscle. He also suffered from coronary artery disease. Jim George had a heart attack about four months after Robin returned home and died on September 4, 1976. The autopsy protocol listed the cause of death as cerebrovascular accident, strokes caused by atherosclerotic cardiovascular disease and anemia of unknown cause. The jury awarded Robin compensatory damages in the amount of $75,000 on her wrongful death cause of action.[45]

Defendants argued there is no evidence to support the jury verdict in favor of Robin because their conduct could not have been the cause of Jim George's death and his death was not reasonably foreseeable. They also assert the compensatory damage award was excessive. We conclude otherwise and affirm the judgment in favor of Robin on her wrongful death cause of action.

An appellate court's power of review is properly limited where expert testimony is in conflict.

"It is within the exclusive province of the trier of fact to determine the credibility of experts and the weight to be given to their testimony. [Citations.] Where there is conflicting expert evidence, the determination of the trier of fact as to its weight and value and the resolution of such conflict are not subject to review on appeal. [Citations.] Such determination is had when the trier of fact accepts the proof presented by an expert on one side of the case and rejects that presented by an expert on the other side." (*Francis v. Sauve* (1963) 222 Cal.App.2d 102, 119-120.) Here the jurors accepted the testimony of the Georges' expert, Dr. William Pitt, a cardiologist who had reviewed Jim George's medical records; they rejected the testimony of defendants' expert.

Dr. Pitt testified that stress is considered to be one of the "basic risk factors" of coronary artery disease. Stressful

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[45] Marcia made no claim on a wrongful death theory.

events raise the level of adrenaline in the blood which, in turn, increases the heart rate and changes the way the heart contracts.

Dr. Pitt then described how the stress resulting from Jim George's encounters with the Krishna organization contributed to his death in 1976. Pitt said that Jim George had led a relatively normal life. He developed coronary artery disease, but "had no particularly outstanding aggravating circumstance to make it much worse." In the middle of this relatively average existence, he suffered the severe impact of losing his daughter and directed virtually all of his energies toward retrieving her. "[T]he trouble he had, trying to locate her, the blind alley that he went up, the contact that he had with the Krishna organization and with the police department, et cetera, continued to aggravate his coronary disease."

Dr. Pitt concluded these events significantly accelerated Jim George's illness. In the normal course of the disease and without optimal treatment Jim George's life expectancy should have been at least five years from the onset of the disease. With optimal treatment it would have been "substantially longer." Dr. Pitt also testified that Jim George's delayed response to the stress – his suffering a heart attack nearly four months after Robin's return home – was a relatively common occurrence.

The jury resolved conflicts in expert testimony in favor of Robin, and we may not disturb its implied findings on the question of causation.

There is also ample evidence to support the jury's implied finding that Jim George's death was reasonably foreseeable by the defendants. "The foreseeability required is of the *risk of harm*, not of the particular intervening act." (6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 976, p. 367.) If the defendant's conduct was a substantial factor in bringing about the harm, the defendant need not have foreseen the extent of the harm or the precise manner in which it occurred. (*Monterrosa v. Grace Line, Inc.* (1949) 90 Cal.App.2d 826, 831-832.)

Marcia explained to Rsabadeva on at least two occasions that her husband had a weak heart, was taking Robin's absence badly, and that she was afraid this would kill him. Marcia reported that Rsabadeva snickered and told her that another devotee's father had a heart attack but did not die. Marcia also informed Jayatirtha about her husband's weak heart and explained that the inability to find Robin would kill her husband because of the terrible stress it was causing him. In spite of defendants' knowledge of Jim George's weak heart, they persisted in concealing Robin's whereabouts and subjected the Georges to verbal and physical abuse.

Defendants argued the compensatory damage award was excessive because it represented more than Jim George's entire earnings for a period longer than he was expected to live. However, the plaintiff in a wrongful death action may recover for damages arising from loss of society, comfort, care and protection afforded by the decedent in addition to damages for pecuniary loss of a parent. (*Krouse v. Graham* (1977) 19 Cal.3d 59, 67.) Here there is sufficient evidence to establish the close relationship between Robin and her father that would give rise to this type of loss. Although Jim George has a limited earning capacity, viewing the entire record we cannot say the $75,000 wrongful death verdict is so large that " 'it shocks the conscience and suggests passion, prejudice or corruption on the part of the jury.' " (*Fagerquist v. Western Sun Aviation, Inc.* (1987) 191 Cal.App.3d 709, 727, quoting *Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 507.)

VI

Evidentiary Contentions

Rsabadeva's Prior Felony Conviction and Related Matters

In the context of describing his conversation with Marcia George in late 1974 concerning the basic tenets of the Krishna faith, Rsabadeva was asked whether he personally adhered to those tenets which included nonviolence and abstinence from

the use of intoxicants such as illegal drugs. Rsabadeva explained that with the exception of the "temperate" use of intoxicants in 1976-1977, he practiced what he preached. Plaintiffs' counsel was permitted to impeach this testimony by cross-examining Rsabadeva as to felony conspiracy convictions he suffered in 1979 and 1982 related to the possession and distribution of drugs. Limited examination was allowed as to the factual basis for one of the charges which included allegations that an individual had been threatened with a shotgun and beaten in an attempt to recover missing drugs. Counsel was also permitted to briefly question Rsabadeva about a plot to murder several drug dealers based on his testimony before the Orange County Grand Jury under a grant of immunity. The jury was instructed that the evidence was admissible only against Rsabadeva and was to be considered only for the purpose of assessing his credibility. Defense counsel repeatedly and vociferously objected to the admission of such evidence on the grounds that it was irrelevant, collateral and unfairly prejudicial.

Defense counsel was correct that Rsabadeva's testimony regarding his following the tenets of the Krishna faith was quite collateral to the issues in this case.[46] It was irrelevant for the purposes of plaintiffs' action whether Rsabadeva was a Krishna saint or a fraud. Nonetheless, under the Evidence Code a trial judge has discretion to permit impeachment on a collateral matter. (3 Witkin, Cal. Evidence (3d ed. 1986) § 1983, pp. 1939-1940.)

That discretion was properly exercised here. In ruling that he would permit limited cross-examination, the trial court explained it was concerned that Rsabadeva attempted to project a holy and saintly image which might unfairly enhance

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[46] Moreover, Rsabadeva's use of drugs or resort to violence was not at issue. Rsabadeva's threat to blow up the George's car could not justify admission of unrelated prior acts of violence. (Evid. Code, § 1101, subd. (a).)

his credibility in the absence of the impeaching evidence.[47] Such considerations were appropriate and the court did not abuse its discretion in allowing the limited inquiry.

Furthermore, even if the evidence should have been excluded, we do not believe it is reasonably probably the evidence affected the verdict. The broad outlines of the facts of this case are largely undisputed, especially as they relate to the acts constituting Marcia's cause of action for intentional infliction of emotional distress. Furthermore, the credibility

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[47] The trial court stated: "But the record doesn't show the sort of – for want of a better description – holier-than-thou kind of demeanor. When Mr. Richard took the witness stand and as he sits in the courtroom watching the trial, his hands are usually folded in front of him, or joined together in front of him under his chin in a sort of prayerful manner. He has a sort of smile on his face, that if it were painted by a classical painter, might be called beatific.

"It's very hard to describe. His voice is somehow soft and ethereal. I don't know quite how to put these things, or encapsulate them into words.

"But the point is that the image that I believe Mr. Richard is trying to create, and I believe the mantle with which he is trying to cloak himself is that he is somehow a little nearer to God than most people, that he is perhaps – if not a saint, at least on his way to sainthood – and that he is a holy man of the cloth in a very special sense of that.

"I think his criminal background, as demonstrated both by the offer of proof and by the indictments and by the convictions that have been shown to this court involving trafficking in narcotics, smuggling hashish oil, and being involved in [getting] that into the United States – as I remember, typewriter cases – is that what was going on? Being involved in assault, possibly involved in a murder, a kind of criminality that is shocking to an ordered society.

"To allow him to wear the grab of sainthood on the witness stand without being challenged in terms of a rather shocking record, is to abuse the court's discretion in the other way, to create a false image to the jury.

". . . . . .

" . . . We are talking about a man whose words and actions say, 'Everything I have done has been to try to be a holy man, in a holy pursuit, moderating my life, rejecting materiality, perhaps slipping a bit with the temperate use of intoxicants', when his history makes that a patent and absurd lie, at least in the court's opinion."

of many of the Krishna witnesses including Rsabedeva would be subject to serious question in any event based simply on the fraudulent conduct they concededly engaged in as part of their attempts to conceal Robin George. The inquiry regarding Rsabadeva's drug dealings, while damaging in an abstract sense, had no relative impact on this case.

Concealment of Other Minors

Plaintiffs introduced evidence of two unrelated incidents in which defendants ISKCON of California and ISKCON of New York were involved in hiding minor children from one or both parents.[48] The trial court allowed the evidence on the

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[48] The "Yanoff incident" involved an 11-year-old boy, David Yanoff, temporary custody of whom had been awarded to his father, Jerry Yanoff, in Chicago. David's mother and Jerry's former wife, Karen Wilson, was a Krishna devotee living at the Laguna Beach temple under the devotional name Krishna Stuta. During the summer of 1975, Jerry and Karen agreed that David would spend a month with Karen at the temple. At the end of the month. David did not want to return to Chicago. Karen spoke with members of the Krishna leadership including Jayatirtha and another GBC representative, Rameswara, and was told they would "take care" of the problem. A month later, Karen and David were sent to Europe where they lived in temples in France and Spain for over one year. In the meantime, Jerry and his father, Morris Yanoff, wrote letters to the ISKCON leadership asking for help in locating David. They received responses from both Jayatirtha and Rameswara that the ISKCON leadership had no knowledge of David's whereabouts but that all temple presidents had been instructed to contact the Yanoffs if they obtained any information about Karen or David. Later, after the Yanoffs began picketing Krishna solicitation efforts at the Chicago airport, the ISKCON leadership forced Karen and David to return to the United States, and David was turned over to his father.

Only a minimal amount of evidence was received regarding the "Johnston incident," which concerned Pete Johnston, a 16-year-old who visited the Laguna Beach temple in 1976 and decided he wanted to become a devotee. Later, after informing the temple president that his parents would not permit him to live at the temple, he was sent to the temple in Portland, Oregon and told not to say anything about his age. Six or seven weeks later, the Portland police discovered Johnston at the temple and returned him to his parents.

theory that it tended to demonstrate the defendants' knowledge and intent with respect to Robin George. (See Evid. Code, § 1101, subd. (b).).

Defendants contend there was no disputed issue as to knowledge and intent and therefore, the admission of the evidence was erroneous and prejudicial. Unfortunately for defendants, this argument effectively concedes the admission of the evidence had no probable effect on the outcome of the case. To the extent the Yanoff and Johnston incidents tend to cast defendants in an unfavorable light, it is only because they employed the same fraudulent practices they concede were followed in their dealings with Jim and Marcia George. Assuming error, a different result is not reasonably probably and reversal is not required. (*Alarid v. Vanier* (1958) 50 Cal.2d 617, 625; *Kuffel v. Seaside Oil Co.* (1977) 69 Cal.App.3d 555, 567.)

VII

Jurisdiction Over ISKCON of Canada

After service of Georges' complaint, ISKCON of Canada (hereafter ISKCON-Can) unsuccessfully moved to quash service of summons on the ground that it lacked sufficient "minimum contacts" with California to sustain the assertion of person jurisdiction. (See generally *Safe-Lab, Inc. v. Weinberger* (1987) 193 Cal.App.3d 1050, 1053.) Pursuant to Code of Civil Procedure section 418.10, subdivision (c), it then sought a writ of mandate which was summarily denied. ISKCON-Can then answered the complaint and proceeded to defend the action on the merits. It now contends it must be permitted to assert its jurisdictional argument on this appeal.

This same contention was addressed and rejected by the Supreme Court in *McCorkle v. City of Los Angeles* (1969) 70 Cal.2d 252, 257-258: "As indicated by authoritative sources published both before and after the enactment of section 416.3 [the predecessor of section 418.10(c)] in 1955, the Legislature intended (1) that the section would provide [a] method of obtaining appellate review of the order here in question, and (2) that the availability of the interlocutory

appellate remedy would, accordingly, preclude review of the order upon appeal from a judgment entered after trial on the merits. [Citations] [¶] Before section 416.3 was enacted, moreover, the rule was that the unsuccessful moving party waived his jurisdictional objection entirely if he made a general appearance after his motion was denied. [Citations.] Section 416.3 was intended to forestall this consequence by permitting the moving party to defer a general appearance while pursuing the interlocutory appellate remedy [citations], but the section does not relieve him of the consequence if he makes the appearance. [Citation.]"

McCorkle did not involve an out-of-state defendant's assertion that California's exercise of jurisdiction would unconstitutionally offend "traditional notions of fair play and substantial justice." (See *Internat. Shoe Co. v. State of Washington* (1945) 326 U.S. 310, 316.)[49] To that extent, *McCorkle* did not directly consider an argument that what is now section 418.10, subdivision (c) is unconstitutional. Nonetheless, it is clear the Supreme Court understood the constitutional implications in that it cited two personal jurisdiction cases in support of its conclusions. (See *Hartford v. Superior Court* (1956) 47 Cal.2d 447; *Remsberg v. Hackney Manufacturing Co.* (1917) 174 Cal. 799.) Moreover, the *McCorkle* holding has since been applied in the personal jurisdiction context to facts functionally identical to those of this case. (*Danzig v. Jack Grynberg & Associates* (1984) 161 Cal.App.3d 1128, 1140-1141.)

We accordingly conclude ISKCON-Can waived any objection to the jurisdiction of the California courts by making a general appearance after its petition for writ of mandate was denied.

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[49] In *McCorkle*, the defendant city argued that the trial court erred in denying its motion to quash service of summons on it as a fictitious defendant. (*Id.* at p. 256.)

VIII

Punitive Damages

It is perhaps appropriate at this juncture to review what remains of the original judgment. We have concluded those portions of the judgment awarding damages to Robin George for wrongful death and to Marcia George for libel and intentional infliction of emotional distress must be affirmed. The wrongful death award to Robin included no punitive damage award. Thus, in considering defendants' challenges to the punitive damage awards, we must consider only the remitted amounts of $2 million awarded on the intentional infliction cause of action and the $500,000 awarded on the libel cause of action, both of which originally constituted a joint award to both plaintiffs but which now, if they remain, go solely to Marcia.

Defendants contend that even these reduced amounts are excessive as a matter of law. They also take issue with the trial court's decision to award the damages jointly and severally against all defendants. Plaintiffs, on the other hand, argue by way of a cross-appeal that the trial court's statement of reasons in support of its conditional new trial order is insufficient to sustain the remittitur. They assert the original awards of $12.25 million for emotional distress and $2 million for libel should be reinstated.

Excessiveness of the Award

The defendants assert that the punitive damage must be reversed because it is excessive and violates various constitutional provisions. They contend the punitive damages were "plainly intended as a death blow to the entire religion."

Generally, an award of punitive damages should be reversed as excessive "only when the entire record viewed most favorably to the judgment indicates the award was rendered as the result of passion and prejudice." *Walker v. Signal Companies, Inc.* (1978) 84 Cal.App.3d 982, 997.) The factors to be considered when assessing a punitive damage award are the nature of the defendant's acts, the amount of compensatory damages awarded and the wealth of the defendant. There

is, however, no fixed ratio by which to determine the proper proportion between compensatory and punitive damages. (*Finney v. Lockhart* (1950) 35 Cal.2d 161, 164; see *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.*, (1984) 155 Cal.App.3d 381, 393-396.) Generally, the more reprehensible the act, the greater the appropriate punishment. (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 928.)

We have repeatedly expressed our conclusion that the defendants' conduct in this case was outrageous. This was a view clearly shared by the trial judge.[50] A punitive/compensatory ratio of 6:1 is not particularly shocking. (See *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc., supra,* 155 Cal.App.3d at p. 390.) Because defendants resisted plaintiffs' attempts to discover relevant financial information and then declined to present evidence of their net worth; (see generally *Vossler v. Richards Manufacturing Co.* (1983) 143 Cal.App.3d 952, 964), it is questionable whether they can be heard to complain that the amount of the punitive damage award will financially destroy them.[51] In any event, defense counsel seemingly conceded to the court that defendants' net worth was

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[50] In ruling on defendants' motion for new trial , the judge made the following comments: "First and foremost, this court must state that in its view the conduct of defendants toward the plaintiffs was outrageous. Furthermore, this court was struck and strongly suspects the jury was struck by the almost universal lack of candor and probable perjury committed by many witnesses for the defendant. No one, least of all this court, likes to hear from witnesses who only coincidentally tell the truth. . . .[§]Although one will never know with certainty what motivated the jury, it may well be that once the jury began to grasp the fact that it could not rely on testimony given by the defendants as being true, that they tended to resolve all factual disputes in favor of the plaintiffs. In this court's view, defendants have only themselves to blame for this state of affairs."

[51] This court's recent decision in *Dumas v. Stocker, post,* page ___ is not to the contrary. In *Dumas,* plaintiff made no effort to obtain evidence of the defendant's net worth. (*Id.* at p. ___.) In contrast here, plaintiffs repeatedly sought discovery which was ultimately denied by the trial court at defendants' insistence.

at least $7-8 million and the trial court apparently believed it was at least $10 million. Given these considerations, defendants' repeated acts and schemes in callous disregard of the rights and feelings of Marcia and Jim George fully justify an award of punitive damages of at least $2.5 million.

Defendants further argue, however, that "the California system for imposing punitive damages without the protections of the criminal law, and indeed without any meaningful standards or protections whatsoever, offends basic due process." They also claim that "the application of the Eighth Amendment's Excessive Fines Clause adds yet a further constitutional dimension to the traditional analysis of excessiveness."

The thrust of defendants' contentions is not without some persuasive force. Although the narrow Eight Amendment argument was recently rejected by the United States Supreme Court in *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.* (1989) 492 U.S. ___, 109 S.Ct. the court specifically left open the due process issue. (*Id.* at p. 2913, 2921; see *Bankers Life & Cas. Co. v. Crenshaw* (1988) 486 U.S. 71, 108 S.Ct. 1645, 1655-1656 (conc. opn. of O'Connor, J.).) In California, however, the due process argument was recently considered and rejected in *Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co.* (1987) 189 Cal.App.3d 1072, 1100-1101. (See also *Toole v. Richardson-Merrell, Inc.* (1967) 251 Cal.App.2d 689, 716-717.) Moreover, the trial judge's thoughtful consideration of the motion for new trial and this court's appellate inquiry have provided defendants in this case with meaningful procedural safeguards, reducing the punitive damages to less than one-tenth of the amount awarded by the jury. Under these circumstances, we think it appropriate to rely on *Downey Savings* pending further action by the United States or California Supreme Courts.[52]

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[52] While we recognize that standardless discretion in the award of punitive damages may implicate constitutional concerns, we have previously observed that rigid adherence to mathematical standards may be neither possible nor desirable: "Although we may now live in a highly computerized society, it is important to recognize the justice system need

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Finally, defendants assert that where a religious entity is accused of a tort not involving physical injury, the First Amendment requires that plaintiffs prove malice beyond a reasonable doubt, or at least by clear and convincing evidence, "to prevent a punitive damage verdict from being an outlet for bias and community hostility." They cite no authority for this contention. The United States Supreme Court has placed no such limitation on the imposition of punitive damages in state defamation actions involving private persons. In *Gertz v. Robert Welch, Inc., supra,* 418 U.S. 323 the court said that states may award punitive damages in defamation actions if actual malice is proven.

Just as the United States Supreme Court has carefully scrutinized " 'the proper accommodation between the law of defamation and the freedoms of speech and press protected by the First Amendment' " in formulating rules applicable to public-figure plaintiffs and media defendants in defamation actions (*Philadelphia Newspapers v. Hepps, supra,* 475 U.S. at p. 768, quoting *Gertz v. Robert Welch, Inc., supra,* 418 U.S. 323, 325), California courts have engaged in a similar balancing process, as observed in *Maheu v. Hughes Tool Co.* (9th Cir. 1978) 569 F.2d 459, 479-480: "It is important to safeguard First Amendment rights; it is also important to give protection to a person who is intentionally and maliciously defamed, and to discourage that kind of defamation in the future. A balance must be struck between those two competing interests. . . .California has chosen to allow such recovery, and we find that the state's interest in deterring malicious

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not and should not mirror a mechanistic view of life. The life of the law should continue to be experience. The concept of justice connotes a human process, performed by judges and juries in good faith, exercised with compassion, still tinged with sufficient subjectivity to conform the rules of law to the realities of life." (*Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc., supra,* 155 Cal.App.3d 381, 388.) This is particularly true in a case such as this where plaintiffs' damages are primarily if not exclusively noneconomic which are often difficult to quantify. It may not be appropriate to sacrifice the effective deterrence of reprehensible conduct out of slavish devotion to a mathematical god of proportionality.

defamation, for the purpose of protecting privacy and reputation, . . . is compelling." In rejecting defendants' argument we note that our courts have not infrequently awarded both compensatory and punitive damages against religious entities on a proper showing of actual malice. (See, e.g., *Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439, 452, *cert. denied* (1977) 429 U.S. 1091.)[53]

Joint and Several Nature of the Award

Defendants claim the court erred in awarding the $2.5 million in punitive damages against all defendants on a joint and several basis. Although punitive damages *may* be apportioned among joint tortfeasors in various amounts according to their individual culpability (*Thompson v. Catalina* (1928) 205 Cal. 402, 407-408), apportionment is not required. Here the facts argue against apportionment. The jury specifically found that each of the individual corporations was dominated and controlled by the individuals and other corporations in the case, and that adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice in the circumstances of this case. The court concurred that there was substantial evidence to support the notion that "defendants were in fact interlocking corporations or a monolith controlled by the Governing Body Commission such that additional assets should be brought in from other ISKCON corporations throughout the United States and/or the world for purposes of considering the net worth of the defendants." We conclude the court properly awarded punitive damages against the defendants on a joint and several basis.

Defendants also fault the trial court for awarding punitive damages jointly to both plaintiffs on the intentional infliction and libel causes of action. They assert that because the causes of action are unsupported as to Robin, the undifferentiated award must be reversed even as to Marcia. Although the

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[53] For similar reasons, we reject defendants' suggestion that punitive damages be prohibited in all defamation cases because of free-speech considerations.

instructions to the jury are ambiguous, the special verdict forms do not appear to allow for separate punitive awards to Robin and Marcia. Notwithstanding this fact, defendants never objected to the form of the special verdicts. Even after the verdicts were returned, when it became clear the jury had made a joint award to both plaintiffs on the two causes of action, defense counsel made no objection despite the fact the trial judge entertained a 30-minute chambers conference after the verdicts were read but before the jury was discharged to discuss potential problems with the verdicts. Defendants did mention the issue weeks later in their omnibus motion for new trial, but that was at a point when it was too late to effect any correction of the verdict.

Where a special verdict form is legally questionable, we believe counsel must do more than remain silent until after the jury has been discharged, hoping for a favorable jury verdict by relying on the existence of an arguable issue for the new trial motion and appeal. Moreover, as we have noted, we think the amount of the award, as reduced by the trial court, is fully justified by the evidence. (*Ante*, pp. 797-798.) The trial court's principal, if not exclusive, reason for reducing the punitive award was its concern with the defendants' ability to pay. (See *post*, fn. 54.) This reasoning would not appear to justify a further reduction of the total punitive damage award simply because a portion of Robin's compensatory award has been invalidated.

Plaintiffs' Cross-appeal: Sufficiency of the Trial Court's Statement of Reasons in Support of the Conditional New Trial Order

Plaintiffs contend the trial court's statement of reasons for conditionally granting defendants' motion for new trial on grounds of excessive punitive damages was insufficiently specific[54] and, accordingly, that the jury's original award

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[54] The court's lengthy statement of reasons, although perhaps subject to other interpretations, essentially states the trial judge's belief that the verdict amounts were completely disproportionate to his general understanding of the defendants' net worth.

must be reinstated.[55] (See *Neal v. Farmers Ins. Exchange, supra*, 21 Cal.3d 910, 932.) Even were we to agree with plaintiffs that the reasons given were inadequate, we could not reinstate the original verdict. Our review of defendants' contention that the amount of punitive damages was excessive considered the remitted amount of punitive damages. (See *ante*, pp. 797-798.) If we were to review the total amount awarded by the jury – nearly $30 million – we would quickly conclude it was excessive. We would then be faced with modifying the punitive damage award to a supportable figure. (See Code Civ. Proc., § 43; *Wollersheim v. Church of Scientology, supra*, 212 Cal.App.3d at pp. 905-906.) We have concluded that the record in this case would not support an award greater than the remitted amount of $2.5 million. Accordingly, the conditional order granting a new trial as to both compensatory (see *ante*, fn. 28) and punitive damages must be affirmed.

Disposition

The judgment is reversed insofar as it awards damages to Robin George for false imprisonment, intentional infliction of emotional distress and libel with instructions to the trial court to enter judgment in favor of defendants as to those causes of action. In all other respects, the judgment and the conditional order granting a new trial are affirmed. As between Robin George and defendants, the parties are to bear their respective costs for this appeal. Marcia George shall recover all her costs.

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[55] A plaintiff may cross-appeal challenging a conditional new trial order even where he previously agreed to accept the remittitur. (*Neal v. Farmers Ins. Exchange, supra*, 21 Cal.3d 910, 918, fn. 1.)

CERTIFIED FOR PUBLICATION

/s/ Wiener
WIENER, J.

WE CONCUR:

/s/ Kremer
KREMER, P.J.
/s/ Work
WORK, J.

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(Filed AUG 10 1988)

STATEMENT OF REASONS IN SUPPORT OF MINUTE ORDER RE MOTION FOR NEW TRIAL AND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

Re: Robin George vs. International Society for Krishna Consciousness Case No. 27-75-65

Defendants have bought two motions. One, a motion for judgment notwithstanding the verdict; the other a motion for new trial concurrently with the motion for judgment notwithstanding the verdict. They have raised with regard to both motions the issue of whether or not there was jury misconduct as supported by declarations filed by two former members of the jury panel alleging that some mention of newspaper articles was made to the jury at an early stage of the case by juror Atchison.

Turning first to the issue of alleged jury misconduct: This court has reviewed the declarations of Lawrence Parrish who was excused from the jury on June 20, 1983, and Marcia Bufalo Juarez who was excused in April of 1983 from jury duty. Both those jurors indicate that juror Atchison attempted to discuss with one or more jurors a newspaper account about

the trial. This despite the fact that the court frequently admonished the jury not to do so. However, the court has also read and considered the declarations of eleven of the twelve jurors who sat through the decision making process and, in fact, rendered the verdict in this case. Those eleven jurors are unanimous in indicating that no such discussions influenced the decision making and that they can recall no instances which reasonably could be construed as defendants would construe the declarations of the two former jurors. Also, the declaration of Sylvia Atchison categorically denies any wrongdoing on her part. This court believes the eleven jurors who submitted declarations to it and does not find the two declarations submitted by defendants to be of enough weight to believe there was misconduct on the part of the jury. Therefore, this court holds that there was no wrongdoing or improper influence on the jury. This court believes that the jurors in this case were unusually conscientious in performing their duties, served well beyond the original time estimate given out of a sense of obligation and in no way purposely violated any instruction or order given to it by the court.

The court has carefully read the notice of motion and the motion for judgment notwithstanding the verdict. At this time the court will not discuss each point raised in said motion but merely state its blanket conclusion that the motion for judgment notwithstanding the verdict ought to be and hereby is denied. The general test is that a defendant's motion for judgment notwithstanding the verdict for the plaintiff may be granted only where, giving the plaintiff's evidence all the value to which it is legally entitled and indulging in every legitimate inference which may be drawn from the evidence, the result is a determination that there is no evidence of sufficient substantiality to support a verdict for the plaintiff. (See *Aguirre v. Reno*, 19 CA3d 284 at 287.) In applying the above test it is clear to this court that the jury had more than sufficient evidence from which to base all of the various verdicts in favor of plaintiff that it reached.

Defendants in moving for a new trial specified that they do so " . . . on the grounds set forth in CCP 657 . . . " There are seven grounds specified in CCP 657. We will deal with

them in what this court believes to be the inverse order of importance to the issues and verdicts rendered in this case.

In reading defendants' moving papers it is difficult to know what he relies on as "accident or surprise which ordinary prudence could not have guarded against." One almost suspects the defendants were not serious in raising this ground as nothing was pointed to with specificity. However, for sake of completeness defendants' motion on that ground is denied.

The ground specified as "newly discovered evidence, material to the party making the application which he could not with reasonable diligence have discovered and produced at the trial" also finds little, if any, support in the moving papers of defendants. This court does not think the motion based on that ground is well taken and, accordingly, will deny it.

With regard to irregularity in the proceedings of the court preventing a fair trial, this court believes that defendants' motion on that basis is more properly addressed as "error in law" allegedly committed by this court. Accordingly, defendants' motion to the extent that it is grounded on irregularity in the proceedings is denied.

Regarding misconduct of the jury addressed the court has already responded to the declarations filed by the two dismissed jurors above and feels that defendants' motion for the reasons set forth above are not well taken.

Regarding "Error in Law": Defendants in the course of their moving papers have ascribed numerous alleged errors occurring during the course of this rather lengthy trial. This court would not be surprised to learn that during the course of four months of litigation that it did commit various errors affecting both sides to the litigation. However, with regard to the major errors ascribed by the defendants, such as violation of their First Amendment rights under the United States Constitution to freedom of religious practice; improperly allowing impeachment testimony of Roy Christopher Richard; instructing the jury on false imprisonment in language not set forth in BAJI; allowing the issue of statute of limitations re Marcia George to go to the jury, and so forth, this court does

not believe that it committed error with regard to such matters. All of the important ascribed error in defendants' moving papers were argued at length during the course of the trial. Such issues as the First Amendment issue were briefed extensively or argued extensively and argued repeatedly. This court set forth at the time its reasoning for each of the rules that it made. If this court's reasoning was in error then defendants may well be entitled to a new trial. However, such determination will have to await the decision of a reviewing court. The court will specifically not address each issue raised by defendants and ascribed as error but rather chooses to rely on the state of the record and its reasoning as explained in the record for its decisions.

Finally we come to the last two grounds set forth in defendants' motion for a new trial, that is, "excessive or inadequate damages", and "Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision as against law." It is this court's decision for reasons as set forth below that some of the verdicts rendered by the jury in this matter were excessive and that such excessive damages were the result, at least in part, of insufficiency of the evidence to justify such a verdict.

Dealing first with the compensatory damage verdicts this court, for reasons to be explained below, will allow to stand as supported by the evidence the verdict in favor of Robin George for false imprisonment of the amount of $1.5 million; the jury's verdict in favor of Robin George for intentional infliction of emotional distress in the amount of $250,000; the verdict in favor of Robin George for libel in the amount of $2,500; the verdict in favor of Robin George for the wrongful death of her father in the amount of $75,000 and the verdict in favor of Marcia George for libel in the amount of $10,000. However, the court will grant defendants' motion for a new trial on the verdict in favor of Marcia George for intentional infliction of emotional distress in the sum of $1,500,000 unless plaintiffs will agree to waive $1,100,000 of said amount, thus rendering judgment in favor of Marcia George in the amount of $400,000 instead of the previously mentioned sum.

With regard to the jury's verdicts in favor of the plaintiffs and against the defendant for punitive damages, this court is of the opinion that such punitive damage verdicts were excessive and the court hereby conditionally grants the defendants' motions for a new trial as indicated in its Minute Order of August 10, 1983.

The reason this court concludes that the punitive damage verdicts are excessive as that term is used in CCP §657 follow. Defendants urge, inter alia, that the jury was motivated by prejudice and that its passions were inflamed. They argue that such prejudice is obvious from the size of the verdict. This court does not agree with that conclusion. Naturally, it is impossible to ascertain precisely what motivated a jury. However, this court felt that the jury was calm, deliberate, sincerely moved by its sense of obligation to the community and to the parties involved to render a fair and impartial verdict and to follow the law to the very best of its ability. This court feels they did so and would not now demean their efforts by giving them the mantle of excessive or unreasonable passion or prejudice so as to set aside the verdict. Therefore, the court's reasons for granting a new trial if plaintiffs refuse to waive substantial portions of the punitive damages award are really based on this court's overview of the case and of items that could not, of necessity, be contemplated by the jury.

First and foremost, this court must state that in its view the conduct of defendants toward the plaintiffs was outrageous. Furthermore, this court was struck and strongly suspects the jury was struck by the almost universal lack of candor and probable perjury committed by many witnesses for the defendant. No one, least of all this court, likes to hear from witnesses who only coincidentally tell the truth.

Although one will never know with certainty what motivated the jury, it may well be that once the jury began to grasp the fact that it could not rely on testimony given by the defendants as being true, that they tended to resolve all factual disputes in favor of the plaintiffs. In this court's view, defendants have only themselves to blame for this state of affairs. Nothing in these comments should be read to indicate

that this court believes that defense counsel in any way suborned perjury or coached the witnesses for his client. In fact, the court strongly believes to the contrary, that Mr. Morgan and Mr. Yoka at all times conducted themselves in accord with the highest standards of professional conduct.

This court indicated above that it believes that the jury lacked some guidelines upon which to predicate its award of punitive damages. The underlying cause, in this court's view, lies in the existing state of the law by which punitive damages may be awarded, considering, among other things, the financial condition of the defendants and yet, in this case, did not allow discovery to take place prior to trial. Plaintiffs' request for discovery was denied pursuant to §3295 of the Civil Code. The defendants were successful in invoking that shield to protect them from making disclosure of their financial condition prior to trial. In an abundance of caution, in order to insist that plaintiffs establish their likelihood of entitlement of punitive damages, this court did not mandate the production of financial records pursuant to said code until a late point in the trial. It became apparent to this court, after several lengthy sessions, and the devotion of many hours by this court and counsel, that defendants' financial condition was indeed a tangled web that would require either a recess of many months to permit discovery or to try the issue before the jury which would require several additional weeks of trial. The controversy centered, among other things, on the following:

(1) Plaintiffs' contention that the copyrights alone to more than 80 volumes belonging to the Baktavadanti Book Trust had a value of more than one billion dollars ($1,000,000,000) or, as defendants claimed, they were of nominal value.

(2) Plaintiffs' claim, supported by some evidence, that substantial assets had been transferred by one or more of the defendants in advance of trial to avoid the consequences of having a substantial net worth at the time of trial.

(3) The issue of whether or not defendants were in fact interlocking corporations or a monolith controlled by the Governing Body Commission such that additional assets

should be brought in from other ISKCON corporations throughout the United States and/or the world for purposes of considering the net worth of the defendants. In this regard, it should be noted that plaintiffs had some substantial evidence to support such a notion.

The above list could probably be expanded but is offered to show the reason the court declined to litigate the financial worth of the defendant at the request of plaintiff. However, in reaching that decision, this court made it abundantly clear to defendants at all times that if they felt their case would be helped by introduction of financial records, that they would be permitted to do so. Defendants declined to pursue that course of litigation.

Accordingly, the jury was not told to consider the financial worth of the defendant in reaching their verdict. Plaintiffs now urge that in determining the amount of punitive damages awarded that this court should likewise disregard financial net worth. Defendants, to the contrary, urge this court to consider the documents that it has seen and to consider that as a factor in reviewing the amount of punitive damages awarded. This court frankly does not feel that it has enough evidence before it at this time to make a determination of defendants' net worth. Surely their holdings in real property at the time of trial were several millions of dollars. Their income from donations from distribution of books through their activity of Sankirtin is apparently substantial. This court, however, would not hazard an opinion as to the amount thereof.

It is this court's view that if a retrial is had on the issue of punitive damages that both sides would be well served by extensive discovery and pretrial rulings as to which assets ought to be included in such new trial.

The primary reason, therefore, for reducing the award of punitive damages is this court's view that such award is excessive. The amount of punitive damages exceeds that which is needed to punish the defendants or is reasonable by way of punishment of the defendants for their wrongful conduct. It is the court's opinion that a significantly lesser award, such as the one suggested by the court, will have the effect of deterrence on the defendants and that the punitive damages

awards as given do not have a reasonable relation to the actual damages even though this court is mindful of the fact that no exact ratio is mandated by law.

Punitive damages are, by their very nature, as viewed from the standpoint of plaintiffs, windfall damages in that plaintiffs have already been fully compensated for all sums needed to make them whole from the injuries which they sustained. This court cannot, in good conscience, allow in excess of Twenty-nine million dollars stand by way of punishing the defendants when in its view of the evidence such award is grossly excessive and would punish the defendants more than our system of justice will permit.

No matter how reprehensible defendants' conduct may have been; and this court is distinctly aware of plaintiffs' arguments concerning the reprehensibility of defendants' conduct; nonetheless, the evidence presented at trial does not indicate that plaintiff was treated worse than other persons who joined with the ISKCON religion. She was not physically tortured. She was fed by the defendants. And, although this court does not for moment minimize the damages suffered by plaintiff, it cannot help but feel that the verdict exceeds the bounds of justice. In fact, this court, in reducing the amount, has set each award of punitive damages at what it considers to be the upper limits of what it would deem to be fair and supported by the evidence. The lower sums set forth in the Minute Order represent the upper limit that the court feels supported by the evidence and gives great deference to the opinion of a unanimous jury.

With regard to the reduction of compensatory damages for Marcia George, this court simply was not persuaded by the evidence of the extent of her emotional trauma. While such trauma was undoubtedly great, the court, in viewing Mrs. George, her demeanor, and the other evidence relating to her emotional condition, believes that there is no evidence from which the jury could find that she had suffered emotional trauma to the extent of $1,500,000. Therefore, $400,000 represents this court's opinion of the maximum amount of compensatory damages supported by the evidence adduced at trial.

Dated: August 10, 1983.

/s/ James A. Jackman
James A. Jackman
Judge of the Superior Court

JAJ:gl